97.

SUPREME COURT OF THE UNITED STATES.

No. 73.

WALTER SMITH ET AL., SURVIVORS OF CLEMENT SMITH, PLAINTIFFS IN ERROR,

vs.

DENNIS CONDRY.

IN ERROR TO THE CIRCUIT COURT, UNITED STATES, FOR WASHINGTON, D. C.

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S. D. Langtree, Print.

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Judges of the Circuit Court of the United States for the District of Columbia, sitting for the County of Washington:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court, before you, or some of you, between Walter Smith, John Carter, William S. Nicholls, and others, survivors of Clement Smith, plaintiffs, and Dennis Condry, defendant, a manifest error hath happened, to the great damage of the said plaintiffs, as by their complaint appears; we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have same at Washington on the second Monday of January next, in said Supreme Court, to be then and there held; and that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right, and according to the laws and custom of the United States, should be done.

Witness the honorable Roger B. Taney, Chief Justice of the said Supreme Court.

Issued this 5th day of January, 1841.

W. BRENT, *Clerk Ct. Ct. D. C.,*
For Washington County.

Filed 5th January, 1841.

DISTRICT OF COLUMBIA, *ss.*

The United States of America to Dennis Condry, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States on the second Monday of January instant, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the District of Columbia, in the county of Washington, wherein Walter Smith, John Carter, William S. Nicholls, and others, survivors of Clement Smith, are plaintiffs in error, and you are defendant in error, to

shew cause, if any there be, why judgment rendered against the said plaintiffs in error, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the honorable W. Cranch, chief judge of the circuit court of the District of Columbia, this 5th day of January, 1841.

W. CRANCH.

Filed 5th January, 1841.

Know all men by these presents that we, Walter Smith, John Carter, and William S. Nicholls, are held and firmly bound unto Dennis Curdy in the full and just sum of three hundred dollars current money, to be paid to the said Dennis Curdy, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this fifth day of January, in the year of our Lord one thousand eight hundred and forty-one.

Whereas, lately, at a circuit court of the United States for the District of Columbia, sitting for the county of Washington, in a suit pending in the said circuit court, wherein the said Walter Smith, John Carter, William S. Nicholls, Francis Dodge, Alexander H. Marbury, William J. Stone, John A. Donohoe, George Parker, and Cleveland A. Fortes, survivors of Clement Smith, were plaintiffs, and the said Dennis Curdy was defendant, judgment was rendered against the said plaintiffs, and they having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to revise the judgment in the aforesaid, and a citation directed to the said Dennis Curdy, citing and admonishing him to be and appear at a Supreme Court of the United States, to be held at Washington on the second Monday in January next.

Now, the condition of the obligation is such, that if the said Walter Smith and others, plaintiffs as aforesaid, do and shall well and truly prosecute their said writ with effect, and answer all damages and costs, if they fail to make their plea good, then the above obligation to be null and void, otherwise to be and remain in full force and virtue in law.

WALTER SMITH, [L. S.]
WM. S. NICHOLLS. [L. S.]

Signed, sealed and delivered, in the presence of
RD. SMITH,
R. S. COXE.

Approved: W. CRANCH.

Copy—Test: W. BRENT, *Clerk.*

Style of Court.

DISTRICT OF COLUMBIA, *ss.*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of November, being the twenty-third day of the same month, in the year of our Lord one thousand eight hundred and forty, and of the Independence of the United States the sixty-fifth.

Present—the Hon. William Cranch, Chief Judge; Buckner Thruston and James S. Morsell, assistant judges; Alexander Hunter, Esq., Marshal; William Brent, clerk.

Parties.

In the record of the proceedings of the said court, among others are the following, to wit:

WALTER SMITH, CLEMENT SMITH, JOHN CARTER, WILLIAM S. NICHOLLS, FRANCIS DODGE, ALEXANDER H. MARBURY, WILLIAM J. STONE, GEO. PARKER, JOHN A. DONOHOE, JOSEPH L. PEABODY, SABRET E. SCOTT, and CLEVELAND FARBES,

vs.

DENNIS CONDRY.

Capias ad Respondendum.

Be it remembered, that heretofore, to wit, on eighteenth day of January, in the year of our Lord one thousand eight hundred and thirty-nine, the said plaintiffs, by Clement Cox, Esq., their attorney, prosecuted and sued forth, out of the circuit court here, the United States writ of *capias ad respondendum*, to the marshal of the District of Columbia directed, in the words and of the tenor following, to wit:

DISTRICT OF COLUMBIA, *to wit*:

The United States of America to the Marshal of the District of Columbia, greeting:

We command you that you take Dennis Condry, late of Washington county, if he shall be found within the county of Washingington, in your said district, and him safely keep, so that you have his body before the circuit court of the District of Columbia, to be held for the county aforesaid, at the city of Washington, on the fourth Monday of March next, to answer unto Walter Smith, Clement Smith, John Carter, William S. Nicholls, Francis Dodge,

Alexander H. Marbury, William J. Stone, John A. Donohoe, Joseph L. Peabody, Sabret E. Scott, George Parker, and Cleveland Forbes, in a plea of trespass on the case, and so forth. Hereof fail not, at your peril, and have you then and there this writ.

Witness the honorable William Cranch, Esq., chief judge of our said court, at the city of Washington, the 14th day of January, Anno Domini one thousand eight hundred and thirty-nine.

Issued the 18th day of January, 1839.

WM. BRENT, *Clerk*.

C. Cox.

Nar.

And the aforesaid plaintiffs, by their attorney aforesaid, on the day of prosecuting and suing forth of the aforesaid writ, declared against the said defendant in the plea aforesaid in form following, to wit:

COUNTY OF WASHINGTON, *sct.*

Dennis Condry, late of said county, gentleman, was attached to answer unto Walter Smith, Clement Smith, John Carter, Francis Dodge, William S. Nicholls, Alexander H. Marbury, William J. Stone, George Parker, John A. Donohoe, Joseph L. Peaboby, Sabret E. Scott, and Cleveland Forbes, in a plea of trespass on the case, and so forth.

And whereupon the said plaintiffs, by Clement Cox, their attorney, complain that whereas the said plaintiffs, before and at the time of committing of the grievance by the defendant, as hereinafter next mentioned, were lawfully possessed and were the owners of a certain ship or vessel of great value, to wit, of the value of fifty thousand dollars, then being in the river Mersey, in England, to wit, at the county aforesaid, and the said defendant was also then possessed of a certain other barque or vessel in the river Mersey aforesaid, to wit, at the county aforesaid, and then and there, with and by his servants in this behalf, had the care, direction, and management of the same, yet the said defendant not regarding his duty in that behalf whilst the said ship or vessel of the said plaintiffs was so in the river Mersey aforesaid, to wit, on the fifteenth day of February, in the year of our Lord eighteen hundred and thirty-eight, at the county aforesaid, took so little and such bad care of his said barque or vessel in the direction and management of the same, that the same by and through the carelessness, misdirection, and mismanagement of the said defendant by his servants in that behalf then and there with great force and violence, ran foul of and struck against the said ship or vessel of said plaintiffs, and then and there drove and forced the said ship or vessel of said plaintiffs upon certain shoals and rocks there being, and thereby greatly broke, damaged, and injured the said ship or vessel, and thereby divers goods, wares, and merchandize of said

plaintiffs, then being on board of said ship or vessel, of great value, to wit, of the value of thirty thousand dollars, then and there became and were greatly wetted, damaged, and spoiled; and also by reason of the premises the said plaintiffs have been obliged to pay, lay out, and expend, and have necessarily paid, laid out, and expended a large sum of money, to wit, the sum of seven thousand dollars, in getting the said ship or vessel off the said shoals and rocks, and in and about the repairing of the said damage so done to the said ship or vessel; and also by reason of said premises, said plaintiffs, at great loss and costs, were compelled and obliged to unlade and discharge the said goods, wares, and merchandize from out of their said ship or vessel, and to store and sell the same in a disadvantageous market; and also by reason of the premises, the said plaintiffs were deprived of the use of their said ship or vessel for a large space of time, to wit, for sixty days, and thereby lost and were deprived of all the profits and advantages which they might and otherwise would have derived and acquired from the use of their said ship or vessel during all the said space of time; and also by reason of the said premises, lost and were deprived of the profits and gains which they, the said plaintiffs, might and otherwise would have earnt and gained on the sale of said goods, wares, and merchandize at a favorable market.

Wherefore the said plaintiffs say they are injured and have sustained damage to the value of fifteen thousand dollars, and therefore they bring suit, and so forth.

Pledges,

JOHN DOE and
RICHARD ROE.
CLEMENT COX,
For Plaintiffs.

A copy of which said declaration was made and sent with the writ to the marshal of the district aforesaid, thereon endorsed, to wit:

"To be served on the defendant with the writ."

March Term, 1839. *Appearance of Plaintiffs, &c.*

At which said fourth Monday of March, in the year of our Lord one thousand eight hundred and thirty-nine, and the day of the return of the aforegoing writ, comes into the circuit court here the said plaintiffs, by their attorney aforesaid, and the marshal of the district aforesaid, to whom the said aforegoing writ was in form aforesaid directed, made return thereof to the court here thus endorsed, to wit:

Marshal's Return.

"Cepi copy was left."

A. HUNTER, *Marshal.*

Defendant's Appearance.

And the said defendant being called, appears in court here, by Richard S. Coxe, Esquire, his attorney; and thereupon, on motion of the said plaintiffs, by their attorney aforesaid, it is ruled by the court here that the said defendant give special bail in the plea aforesaid, or in default thereof, be committed to the custody of the marshal of the district aforesaid. Thereupon a certain James Adams and John E. Foulkes, present here in court in their proper person, (with the consent of the said plaintiffs, by their attorney aforesaid,) undertakes for the said defendant that in case the aforesaid plaintiffs shall recover judgment against the said defendant in the plea aforesaid, or that the said defendant shall be therein legally convict, that then the said defendant shall pay the condemnation of the court thereupon, or render his body to the custody of the marshal of the district aforesaid in satisfaction thereof, or that they, the said James Adams and John E. Foulkes, will do the same for him.

Rule, Plea, and Imparlance to November Term, 1839.

And thereupon on motion of the said plaintiffs, by their attorney aforesaid, it is ruled by the court here that the said defendant answers to the declaration aforesaid of the said plaintiffs in the plea aforesaid, or judgment by the court here will be entered against him in default thereof; and the said defendant, by his attorney aforesaid, defends the force and injury when, and so forth, and prays leave of the court here to imparle until the fourth Monday of November next, and then to answer to the declaration aforesaid of the said plaintiffs in the plea aforesaid, and to him it is granted, and the same day is given to the aforesaid plaintiffs also.

Appearance of Parties.

At which said fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-nine, to which said day the said defendant had leave to imparle, and then to answer to the declaration aforesaid of the said plaintiffs in the plea aforesaid, comes again into the circuit court here, as well the said plaintiffs, by their attorney aforesaid, as the said defendant, by his attorney aforesaid.

Plea of Not Guilty, Issue Joined, and Venire Facias to March Term, 1840.

And the said defendant, by his attorney aforesaid, as before, defends the force and injury when, &c., and saith that he is not guilty in manner and form as the aforesaid plaintiffs above against him have complained, and of this he puts himself upon the country; and the said plaintiffs, by their attorney in like manner, and

so forth; therefore let a jury thereon appear before the court here on the fourth Monday of March next, by whom, and so forth, and who neither, and so forth, to recognize, and so forth, because as well, and so forth, and the same day is given to the aforesaid parties then and there, so forth.

Appearance and Continuance to November Term, 1840.

At which mentioned fourth Monday of March, in the year of our Lord one thousand eight hundred and forty, comes again into the circuit court here as well the said plaintiffs, by their attorney aforesaid, as the said defendant, by his attorney aforesaid; thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, the said cause is continued until the fourth Monday of November next.

Clement Smith, one of the Plaintiffs—Death Suggested.

At which mentioned fourth Monday of November, in the year of our Lord one thousand eight hundred and forty, come again into the circuit court here, as well the said Walter Smith, John Carter, William S. Nicholls, Francis Dodge, Alexander H. Marbury, William J. Stone, John A. Donohoe, George Parker, Joseph L. Peabody, Sabret E. Scott, and Cleveland Forbes, part of the said plaintiffs, by their attorney aforesaid, as the said defendant by his said attorney; and the said Clement Smith doth not come; and hereupon the said plaintiffs abovenamed, by their said attorney, suggests to the court here, that after the last continuance of the plea aforesaid, and before this day, on the day of last past, the said Clement Smith, one of the parties, plaintiff in the plea aforesaid, departed this life, and whom the plaintiffs first abovenamed have survived, which the said defendant doth not deny; whereupon, for trying the issue aforesaid, it is ordered by the court here that twelve persons from the pannel of petit jurors returned to the court here by the Marshal of the District of Columbia be called, who, being called, come, to wit:

Jury.

1. Vincent King,
2. Anthony Holmead,
3. Benjamin S. Bayly,
4. John Crockwell,
5. Wm. Easby,
6. Richard Brooke,
7. Isaac S. Locke,
8. Richard Butt,
9. Joseph S. Clarke,
10. Walter Clarke,
11. John B. Ferguson,
12. John Summers.

Verdict of Not Guilty, and Judgment for Defendant, with Costs.

Who, being duly empannelled and sworn to say the truth in the premises, upon their oath do say, that the said defendant is not guilty in manner and form as the aforesaid plaintiffs above by pleading have alleged; therefore it is considered by the court here

that the said plaintiffs take nothing by their writ and declarations, but for their false complaint against the said defendant be in mercy, &c., and that the said defendant go thereof without day, &c. And it is further considered by the court here that the said defendant recover against the said plaintiffs the sum of one hundred and ninety-six dollars and twenty-three cents, for his costs and charges by him laid out and expended in and about his defence in this behalf sustained, to the said defendant by the court now here adjudged, &c. and that the said defendant may have execution thereof, &c.

Memorandum.

Memorandum.

Before the jurors aforesaid withdrew from the bar of the court here, the said plaintiffs, by their attorney aforesaid, filed in court here the following bills of exceptions, to wit:

Plaintiff's 1st Bill of Exceptions.

Plaintiffs 1st Bill of Exceptions.

In the progress of this cause, the plaintiffs having offered evidence to prove that on the 15th of February, 1838, the barque Tasso, the property of defendant, in coming out of the dock at Liverpool, on her way to sea in the prosecution of her homeward voyage to the United States, ran foul of and occasioned damage to the Francis Depau, a ship belonging to plaintiffs, and inflicted damage and injury upon the vessel of the said plaintiffs; and having further given evidence tending to prove that said collision was the result of unskilful management on the part of the Tasso.

The defendant gave in evidence the statutes of 37 Geo. 3, c. 78, 52 Geo. 3, c. 39, and 6 Geo. 4 c. 125. (Copied in page 19.)

And further proved that there was on board the Tasso, at the time of her moveing from the dock and until after said collision, a regular licensed pilot of said port of Liverpool; that the said vessel was under the management and direction of said pilot, and that the directions and orders of said pilot were followed and obeyed on board said vessel, the Tasso; that the master of the Tasso was not on board her during the time of her moveing from said dock into the river; and that such absence of the master was usual and customary on such occasions.

The defendant upon said evidence prayed the court to instruct the jury that by the true construction of the statutes of Great Britain, 37 Geo. 3, c. 78, 52 Geo. 3, c. 39, and the 6 Geo. 4, ch. 125, produced on the trial. (Copied in page 19.)

The defendant is not responsible to the plaintiffs in this action for any damage occasioned by the default, negligence or unskilfulness of the pilot proved to have been on board the Tasso, which

opinion the court gave as prayed, to which the plaintiffs, by their counsel, excepted, and prayed the court to sign and seal this bill of exceptions, which is done accordingly, this 24th day of December, 1840.

W. CRANCH, [L. S.]
B. THRUSTON, [L. S.]
JAMES S. MORSELL. [L. S.]

Plaintiff's 2d Exceptions.

Plaintiff's 2d Bill of Exceptions.

In the trial of this cause the plaintiffs produced a competent witness, and offered to prove that the ship of the plaintiff, mentioned in the declaration, at the time of the injury complained of, was loaded with salt and ready to sail for the Georgetown market, and that if the ship had then sailed she would in due course have arrived in Georgetown (as was intended when her lading was taken in) in due time for the sale of the cargo at the fishing season of the Potomac river, when there is a great demand for salt; and that the loss occasioned by the injury in the delay of the vessel, preventing her arrival till after the fishing season, as she was compelled to unload and take in another cargo of salt, amounted to between 10 and 11 cents per bushel, making the loss in the whole cargo $2,101 20, and contended that they should be allowed to give this evidence and to recover damages for the said loss, estimating the salt by the price at Georgetown in the fishing season when the vessel would have arrived.

But the court refused to allow the said evidence to be given by the plaintiffs, to which the plaintiffs, by their counsel excepted, and prayed the court to sign and seal the bill of exceptions, which is accordingly done this 23d day of December, 1840.

W. CRANCH, [L. S.]
JAMES S. MORSELL. [L. S.]

Plaintiff's 3d Exceptions.

Plaintiff's 3d Bill of Exceptions.

And the plaintiffs having, after the aforegoing evidence, farther offered evidence to prove that it is the usage of vessels coming out of the docks of Liverpool into the river to have their anchors slung in a tackle ready to be thrust over the bows, and in a situation to be dropped immediately on passing through the lock connecting the lock with the basin and before passing from the latter into the river; that the anchor was not put over the bow nor attempted to be so done in the present case, on board the Tasso, until this vessel had passed into the river and was approaching the Francis Depau;

and the defendant having offered in evidence the deposition of Frederick Lewis (copied in page 22) to prove that the Tasso, in passing from the basin through the piers thereof into the river had the said vessel in check by a hawser extending therefrom to one of the said piers, which hawser parted as the vessel cleared the pier head, and that the fish pennant or teackle suspending the anchors of said vessel broke in the attempt to get them over the bow of the vessel as aforesaid, and they thereupon fell upon the deck of the vessel; and the plaintiffs having further offered evidence by the pilot of the Francis Depau, to prove that defendant's vessel appeared badly furnished, and that the mate thereof (the master being absent) at the time, declared that he had not a rope on board fit to hang a cat.

And in the further trial of this cause the plaintiffs, after the depositions for the plaintiffs and defendant were read, offered evidence to show that in the management of a vessel when the fish tackle breaks, and it is important that the anchor should be thrown out, that it ought to be and can be accomplished in a short time by fixing another rope by a strop to the anchor and heaving it over the bows, and that such new fixture can be applied in a minute or two.

And the defendant having offered the prayer No. 4, (copied in page 21,) the court gave the instruction as prayed, to which the plaintiffs, by their counsel, excepted. And the plaintiffs then prayed the court to instruct the jury that if they believe from the evidence that the collision took place as above stated, then such breaking of the said hawser and tackle is no excuse for the collision on the part of the defendants, which the court refused; to which refusal also the plaintiffs excepted, and prayed the court to sign and seal the bill of exceptions, which is done accordingly this 23d day of December, 1840.

W. CRANCH, [L. S.]
JAMES S. MORSELL. [L. S.]

Agreement as to the statutes of Great Britain, referred to in Plaintiff's 1st Bill of Exceptions, page 15.

In this case it is agreed that, on the trial in the Supreme Court, the several British statutes referred to in the bills of exceptions instead of being incorporated in said bills may be read as evidence, and that the map and chart given in evidence in the court below may be referred to as part of the evidence without being incorporated in the record.

F. S. KEY, and
C. COX,
For Plaintiffs.
R. S. COXE,
For Defendant.

Prayer No. 4, referred to in Plaintiff's 3d Exception, page 18.

That if they, jury, shall believe from the evidence that the collision between the Tasso and the Francis Depau was occasioned by the breaking of her hawser and fish teackle, yet from the said facts the jury are not warranted in inferring that the said vessel, the Tasso, at the time of her sailing was unseaworthy.

Deposition of Frederick Lewis.

Deposition of Frederick Lewis, referred to in Plaintiff's third Exception, page —.

WALTER SMITH, CLEMENT SMITH, JOHN CARTER, WILLIAM S. NICHOLLS, FRANCIS DODGE, ALEXANDER H. MARBURY, WILLIAM J. STONE, GEORGE PARKER, JOHN A. DONAHOE, JOSEPH L. PEABODY, SABRET E. SCOTT, and CLEVELAND FORBES,
vs.
DENNIS CONDRY.
} Case.

Circuit Court of the District of Columbia for Washington County.

STATE OF NEW YORK,
City and County of New York, ss.

The deposition of Frederick Lewis, a witness produced, sworn, and examined in the above entitled cause or civil suit, depending in the circuit court of the District of Columbia for the county of Washington, wherein Walter Smith and others are plaintiffs, as above named, and Dennis Condry is defendant, as follows:

I was mate of the barque Tasso in February, 1838. On 15th February, 1838, at Liverpool, the vessel was in Prince's dock, the captain gave me orders to haul the ship into the basin ready to go to sea. If the crew was not on board he told me to employ men in their place. I did employ other men in the place of those that were absent.

The pilot came on board at half past eleven o'clock before we left the dock. The pilot gave me orders to haul the ship close to the pier head, to set the foretopsail, and fore topmast staysail, and to run a hawser to the pier head. He then ordered the stern fast to be let go, and to brace the yards and fill the sails. We parted the hawser, there was a strong flood tide, and the vessel became unmanageable. The pilot ordered the man at the helm to put the helm hard aport. He did so. And it was kept so until the vessel came in contact with the Francis Depau. It was blowing fresh, and there was a strong flood tide, and the vessel would not mind her helm. The tide was sitting towards the Francis Depau.

The Francis Depau was laying about a third of a mile above where we startel from at anchor *at anchor*. If the ship had minded her helm, we should have gone clear of the Francis Depau. The course of the Tasso in going to sea was to go away from the Francis Depau, and not towards her. When the pilot saw we were going towards the Francis Depau, he gave me orders to get one of the anchors ready. I went forward and had the anchors fixed as is customary in going out of port, and got it ready as soon as I could. The pilot hailed the Francis Depau and told them to put her helm hard to starboard so as to clear us. I could not see whether they did so or not. From the way the ship lay I think they did not. If they had shifted the helm, I think it would have sheered the ship so that the Tasso would have gone by without striking her. I saw persons on the deck of the Francis Depau, and think they must have heard the pilot when he hailed them. I went forward and called some men to get an anchor over, and the fish pendant parted while we were getting the anchor over the side of the vessel, that caused both anchors to fall on the side of the deck. We then struck the Francis Depau and carried away our forestays and fore rigging. I then got the men forward and hove one of the anchors over. Our pilot told them to pay out their chain to get clear of us. Our ship ranged ahead so as to bring their bowsprit in contact with the foremast. Our vessel ranged ahead so that they carried away our bulwarks and stanchions. The Francis Depau shipped her chains and got clear of us. We then took a steamboat and was towed into the dock again. Every thing was done according to the directions of the pilot, and that could be done to prevent the collision, but the ship would not mind her helm. I have been to Liverpool three voyages. It is usual to employ men in place of the crew who will absent at the time of sailing. It is customary to employ a pilot there.

FREDERICK LEWIS.

Sworn to before me, the 13th March, 1839.

D. P. INGRAHAM,
Associate Judge of New York Com. Pleas.

WALTER SMITH, CLEMENT SMITH, JOHN CARTER, WILLIAM S. NICHOLLS, FRANCIS DODGE, ALEXANDER H. MARBURY, WILLIAM J. STONE, GEORGE PARKER, JOHN A. DONOHOE, JOSEPH L. PEABODY, SABRET E. SCOTT, and CLEVELAND FORBES,
vs.
DENNIS CONDRY.
} Case.

Circuit court of the District of Columbia for Washington County.

CITY, COUNTY AND STATE OF NEW YORK.

I, Daniel P. Ingraham, associate judge of the court of common pleas of the city and county of New York, not being of counsel

or attorney for either of the said parties, nor in any manner interested in the event of the said cause, do hereby certify that the aforegoing deposition of Frederick Lewis was taken before me at the city of New York, on this thirteenth day of March, in the year of our Lord one thousand eight hundred and thirty-nine.

That the said deposition was reduced to writing by me in the presence of the witness, and was signed and subscribed by him in my presence, he having been by me first carefully examined, cautioned and sworn to testify to the whole truth, relative to the aforementioned cause or matter in controversy. That the said deposition was taken at the instance of the said defendant in the said cause, and that the reason for taking the same is, that the said deponent lives at a greater distance than one hundred miles from Washington county in the District of Columbia, the place of trial of the said cause. Neither the plaintiffs nor their attorney are within one hundred miles of this place, and therefore they were not notified by me of the taking of this deposition, nor present at the taking thereof.

And I do further certify that the said deposition is by me sealed up and directed to the circuit court of the District of Columbia for Washington county at Washington city.

In testimony whereof, I have hereunto set my hand and seal the day and year in this behalf above written.

D. P. INGRAHAM,
A. J. Com. Pleas.

STATE OF NEW YORK,
City and County of New York, ss.

I, Joseph Hoxie, clerk of the city and county of New York, and also clerk of the court of common pleas for the said city and county, do hereby certify that Daniel P. Ingraham, Esq., before whom the annexed deposition was taken, was, at the time of taking the same, associate judge of the said court of common pleas in and for the said city and county, duly commissioned and sworn, and duly authorized to take the same, and that I believe the signature of said judge thereto subscribed is genuine.

In testimony whereof, I have hereunto set my hand,
[L. S.] and affixed the seal of the said court and county, the 13th day of March, 1839.

JOSEPH HOXIE,
Clerk.

Appeal to Supreme Court U. S.

And whereas, afterwards, to wit, on the fifth day of January in the year of our Lord one thousand eight hundred and forty-one, the said Walter Smith, John Carter and others, survivors of Clement Smith, produced and filed in court here the United States writ for

the correcting of errors, of and upon the judgment aforesaid, directed to the judges of the circuit court of the United States in the District of Columbia, sitting for the county of Washington; and in pursuance thereof, and according to the form and effect of the law in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, and a copy of the appeal bond hereunto annexed, is hereby transmitted to the said Supreme Court accordingly.

Clerk's Certificate.

[L. S.] In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court at the city of Washington, this 12th day of January, 1841.

W. BRENT, *Clk.*

SUPREME COURT OF THE UNITED STATES.

No. 84.

McClurg, Parry, & Higby, Assignees, &c., Plaintiffs in Error,

vs.

Kingsland, Lightner & Cuddy.

IN ERROR TO THE CIRCUIT COURT UNITED STATES, FOR WEST PENNSYLVANIA.

Copy of the Docket entries in the case of McClurg, Parry, and Higby, vs. Kingsland, Lightner, and Cuddy, No. 9, of October Term, 1835.

October Term, 1835.

Wm. T. McClurg, John C. Parry and Enoch J. Higby, partners, doing business under the firm of McClurg, Parry & Higby, assignees of James Harley,

vs.

Laurence Kingsland, Isaac Lightner & Jas. Cuddy, partners, doing business under the firm of Kingsland, Lightner & Cuddy.

} 9 Narr.

Summons case for infringment of patent exit September 10, 1835.

October 19, 1835, summons returned, served, by leaving a copy for each of the defendants at their office, September 25, 1835.

LOURIE, McCANDLESS AND McCLURE, SHALER.
BIDDLE, FINDLAY.

December 7, 1835, Narr filed.

December 7, 1835, Rule to plead, in one month or judgment, (copy.)

December 8, 1835, Rule returned, served by copy on R. Biddle, Esq., December 7, 1835, No. 250.

February 1, 1836, Rule on part of plaintiffs to take depositions on ten days notice.

April 28, 1837, Demurrer to narr filed.

April 28, 1837, Deposition of P. Sailys, Kingsland, filed.

May 26, 1837, New narr filed by consent.

November 21, 1837, Continued.

May 29, 1838, Continued.

November 15, 1838, Subpœna's on part of plaintiffs to Samuel Hartman, Timothy Miller, Alfred Davis, Daniel Rich, John McPherson, Orlando Miller, James Reeder, James Bates, Jesse Wildo, John Harden, William Campbell, Charles Bradley, and R. Bradley.

November 27, 1838, Continued.

May 30, 1839, Depositions taken before Alderman Lourie, under an agreement of attorneys, filed.

July 11, 1839, Subpœnas on part of plaintiffs to.

July 24, 1839, Continued, prov rule, costs of the term to be paid by plaintiffs.

November 11, 1839, Subpœna on part of plaintiff to Samuel Hartman and John Hardin.

November 19, 1839, Subpœnas on part of defendants to.

November 19, 1839, Tried by jury, and 23d, verdict for plaintiffs for $600 damages, and six cents costs; same day motion by Mr. Biddle, for a new trial.

December 4, Motion for a new trial argued by Mr. Findlay, for the motion, Mr. McCandless and Mr. Shaler, against it.

December 5, 1839, Opinion of the court delivered granting a new trial.

January 24, 1840, Rule on part of plaintiff to take depositions on ten days notice.

February 14, 1840, Rule on part of defendants for a commission to take testimony in Wheeling, Virginia, who nominates David Agnew, as commissioner, interrogatories filed.

February 26, 1840, Rule on part of defendants for a commission to take testimony in Boston, Massachusetts, and nominate on their part George S. Hilliard, Esq., of Boston, commissioner, interrogatories filed.

March 3, 1840, Cross interrogatories filed by plaintiffs in commission, to Wheeling, and S. T. Welden, named as commissioner on their part.

March 5, 1840, Exit commission.

March 14, 1840, Plaintiffs' cross interrogatories filed.

March 18, 1840, Commission issued to George S. Hilliard and Thomas A. Dexter, Esqs., of Boston, Massachusetts, commissioners to take depositions.

March 28, 1840, Commission and depositions taken at Wheeling, returned and filed.

May 13, 1840, Subpœnas to Samuel Hartman, John Hartman, John Hartman Moulder, Alfred Davis, Timothy Miller, John Shiner, James Reeder, R. B. Craig, Orlando Miller, Hugh Gallagher, John Girty, James Reed, Thomas Russell, Edward Stevens, David Adams, James Bates, Sylvanus Lothrop, Sylvanus Thompson, John Shoenberger, John Leonard, John Harden, John McPherson, John Freeman, Thomas Tucher, James Hoon, William Campbell, Joseph Kay, Edmund Midgely, Alexander Bradley, Lewis Clancey, John Parrell.

May 13, 1840, Commission with depositions taken at Boston, before George S. Hilliards and Thomas A. Dexter, Esqs., returned and filed; notice of the return of the commission given to the attorneys of the parties, except Mr. Biddle, who was absent, rule 74. Same day subpœnas on part of defendants to Samuel Leonard, John Nicholson, Benjamin Minis, Philip Shaurs, Abyah Eaton, James Brougher, William Jones, Charles Bradley, Orlando Miller,

and Daniel Rich, John Friesel, Edward Bratt, and Abner Kevus, and James Reed.

May 20, 21, 22, 23, 25 and 26, 1840, And on the 26th verdict for defendants.

August 13, 1840, Fieri facias returned, money made.

Received my cost, from marshal. C. J. R.

Costs.

Clerk	$51 00
Attorney	8 00
Marshal	30 20
Crier	20
	$89 40
Defendants bill	78 87
Clerk	2 40
Marshal	2 00
	$212 67

Received amount of defendants' bill from clerk, August 17, 1840, $178 87.

KINGSLAND, LIGHTNER & CUDDY,
By ISAAC LIGHTNER.

January 5, 1841, Citation issued same day. Returned, services accepted.

JAMES FINDLAY,
Attorney of Defendants in error.
Per CHARLES S. BRADFORD.

January 5, 1841.

Marshal's fees $2.

Among the rolls, records, and judicial proceedings of the circuit court of the United States, in and for the western district of Pennsylvania, may be found the following words and figures, viz:

Copy of Prœcipe.

WESTERN DISTRICT OF PENNSYLVANIA, *ss.*

WM. T. MCCLURG, JOHN C. PARRY, and ENOCH J. HIGBY, partners, doing business under the firm of MCCLURG, PARRY, & HIGBY, assignees of JAMES HARLEY,

vs.

LAWRENCE KINGSLAND, ISAAC LIGHTNER, and JAMES CUDDY, partners, doing business under the firm of KINGSLAND, LIGHTNER, & CUDDY.

Issue summons case for infringement of patent, returnable to October term, 1835.

To Edwd. Roberts, Esq.,
Cl'k Dist. Court W. D. of Pa.

W. H. LOURIE,
Plff's Att'y.

Sept. 10, 1835.

Endorsed: No. 9, Oct. T., 1835, McClurg, Parry, & Higby vs. Kingsland, Lightner, & Cuddy. Prœcipe case. Filed Sept. 10, 1835.

Lourie.

Copy of Summons.

United States,
Western District of Pennsylvania, sct.

The President of the United States to the Marshal of the Western District of Pennsylvania, greeting:

We command you that you summon Lawrence Kingsland, Isaac Lightner, and James Cuddy, partners, doing business under the firm of Kingsland, Lightner, & Cuddy, late of your district, if they may be found therein, so that they be and appear before the judge of the district court of the United States, in and for the western district of Pennsylvania, at a session of the same court, to be holden at Pittsburgh, on the third Monday of October next, to answer to William T. McClurg, John C. Parry, and Enoch J. Higby, partners, doing business under the firm of McClurg, Parry, & Higby, assignees of James Harley, of a plea of trespass on the case, &c., for infringement of patent; and have you then and there this writ.

Witness, the honorable Thomas Irwin, judge of the United States, in and for the western district of Pennsylvania, at Pittsburgh, this fourth day of May, A. D. 1835, and in the fifty-ninth year of the independence of the said United States.

E. J. ROBERTS,
Clerk.

Endorsed: No. 9 of October term, 1835. McClurg, Parry, & Higby, assignees of James Harley, vs. Kingsland, Lightner, & Cuddy. Summons case for infringement of patent. Served by leaving a copy for each of the defendants at their office.

Sept. 25, 1835.

JNO. M. DAVIS,
Marshal.

Marshal's fees, $7 50.

Lowrie.

Copy of Narr.

Western District of Pennsylvania, *ss.*

Lawrence Kingsland, Isaac Lightner, and James Cuddy, partners, doing business under the firm of Kingsland, Lightner, & Cud

dy, were attached to answer William S. McClurg, John C. Parry, and Enoch J. Higby, partners, trading under the firm of McClurg, Parry, & Higby, assignees of James Harley, in a plea of trespass on the case. For that whereas by certain letters patent made out in due form of law, in the name and under the seal of the United States, dated the third day of March, in the year of our Lord one thousand eight hundred and thirty-five, and in court to be produced, was granted to James Harley, a citizen of the United States, and to his heirs, administrators, and assigns, for the term of fourteen years from the said date, the full and exclusive right and liberty of making, constructing, using, and vending to others to *to* be used, his improvement in the mode of casting chilled rollers and other metallic cylinders and cones: And for that whereas on the sixteenth day of March, in the year of our Lord one thousand eight hundred and thirty-five, by writing, in the city of Pittsburgh, county of Allegheny, and State of Pennsylvania, to be produced in court, the said James Harley did in lawful form make over and assign all his right, title, and interest and claim, for himself, his administrators, and assigns, in and to the said improvement, to the said William S. McClurg, John C. Parry, and Enoch J. Higby, partners in trade, being entitled in manner aforesaid to all the right, title, interest, and claim of the said Harley to the aforesaid improvement, in as full and complete a manner as he himself was entitled, do in fact say, that the defendants, well knowing the premises, but contriving and fraudulently intending to injure the plaintiffs in this behalf, did, on the said first day of June, and at divers times between that day and the day of the purchase of this writ, to wit, in said western district of Pennsylvania, without consent of plaintiffs in that behalf first obtained, in writing, or otherwise, unlawfully devise, make, and use the said improvement so invented by said James Harley, and secured to him as aforesaid, contrary to the form of the act of Congress of the United States made and passed on the twenty-first day of February, in the year of our Lord one thousand seven hundred and ninety-three, entitled An act to promote the progress of useful arts, and to repeal the act heretofore made for that purpose, by means of which, and by force of another statute of the United States made and passed on the seventeenth day of April, in the year of our Lord one thousand eight hundred, entitled "An act to extend the privileges of obtaining patents for useful discoveries and inventions to certain persons therein mentioned, and to enlarge and define the penalties for violating the rights of patentees," the defendants have forfeited to the plaintiffs a sum equal to three times the actual damages sustained by the plaintiffs from or by reason of the premises, which actual damages the plaintiffs aver is equal to the sum of five thousand dollars, and an action hath accrued to the plaintiffs to have and to recover of the said defendants the sum of fifteen thousand dollars, being a sum equal to three times the said sum of five thousand dollars, yet the defendants, though often re-

quested, have never paid the said sum to the plaintiffs' damage, and therefore they bring their suit.

WALTER H. LOURIE,
Plff's Att'y.

Endorsed: No. 9, Oct. T., 1835. McClurg, Parry, & Higby, assignees, &c., vs. Kingsland, Lightner, & Cuddy. Narr in case. Filed Dec. 7, 1835.

LOURIE.

Copy of Rule to plead.

IN THE DISTRICT COURT OF THE UNITED STATES,
For the Western District of Pennsylvania.

No. 9 of October Term, 1835.

McCLURG, & Co.
vs.
KINGSLAND, & Co. } Case.

And now to wit, Dec. 7, 1835.

Copy.

Rule to plead in one month or judgment.

From the Record.
LOWRIE,
BIDDLE,

E. J. ROBERTS, [L. S.]
Clerk.

Endorsed: No. 9 of Oct. 1835. McClurg & Co. vs. Kingsland & Co. Rule to plead. Served by copy on R. Biddle, Esq. Dec. 7, 1835. So answers

THOS. BAIRD,
JNO. M. DAVIS.

Marshal's fees, $2 00.

Copy of Demurrer to Narr.

WILLIAM T. McCLURG, JOHN C. PARRY, and ENOCH J. HIGBY, Assignees of JAMES HARLEY,
vs.
KINGSLAND, LIGHTNER & CUDDY.

October Session, 1835.

And the said defendants, by Richard Biddle, their attorney, come and defends the wrong and injury, and say that the said declaration and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law

for the said plaintiff to have or maintain his aforesaid action thereof against the said defendant, and that he, the said defendant, is not bound by law to answer the same, and this he is ready to verify; wherefore, by reason of the insufficiency of the said declaration in this behalf, the said defendant prays judgment, and that the said plaintiff may be barred from having or maintaining his aforesaid action thereof against them.

R. BIDDLE,
Deft's Attorney.

Endorsed: No. 9, October 7, 1835. McClurg et al. *vs.* Kingsland et al. Demurrer to narr.
Filed April 28th, 1837.

Copy of Philip Kingsland's Deposition.

WESTERN DISTRICT OF PENNSYLVANIA, *ss.*

McCLURG, PARRY & HIGBY
vs.
KINGSLAND, LIGHTNER & CUDDY. } No. 9, October Term, 1835.

FEBRUARY 25, 1836.

It is agreed that the deposition of Philip Kingsland shall be taken in this case this day at ten o'clock, A. M. before some alderman of the city of Pittsburg, at the office of Richard Biddle, Esq. in said city, and being filed of record, shall be read in evidence by either party in the same manner as if taken under rule of court and notice, the deposition to be subject to all legal exceptions appearing in the face of it.

W. H. LOWRIE,
Plff's Attorney.
R. BIDDLE,
For Defendants.

McCLURG, PARRY & HIGBY
vs.
KINGSLAND, LIGHTNER & CUDDY. } No. 9, October Term, 1835.

Philip Kingsland being duly sworn according to law, saith: I was at work at the foundry of Kingsland, Lightner & Cuddy when James Harley came there to work, and after he had been there off and on for two or more years, he suggested to me that he thought there was a better way of making chilled rollers than the way we were casting them. I told him to let me know what it was, and if I thought it was worth while we would try it. The improvement he thought of in the first place did not answer, and did no better than the way our foundry did. The first attempt was by a perpendicular gate or tube, and next trial by a flat gate or tube, and

next was by an angling gate cut both ways, so as to meet in the centre at opposite side, none of which answered better than before. The next attempt was by an angling gate as now used, and in the making of this discovery I believe I had as much hand in it as James Harley had, and my reason for this opinion is because that while casting I stood by the roll while casting, and James by the crane ladle to pour the metal into the roll, so that if any alteration was wanted, I was the one to tell him when it was right or wrong. In making and trying to make this improvement, Harley and I consulted together on all occasions, and I know of nothing made towards this improvement without my approbation. I should suppose that the expense incurred was as much as sixty or seventy dollars in making the experiments by alterations, and I think there was one or two rolls lost in making the experiment, as near as I can recollect, the loss of which would be near about $15 00. Harley was not bound to bear any of the expense of these risks and losses. Harley did not at any time to me alledge any expectation of additional profit to himself, or care for the discovery succeeding well, nor during the progress of the attempts did he express any intention of making an application for a patent should he succeed. Mr. Harley was a workman entitled to, and did receive, the highest wages which was going about the foundry as a moulder; and at the time we were making the observations he was getting nine dollars a week, and when the improvement was found to be beneficial, his wages were raised to ten dollars a week. From the time we first began to try the improvement until we succeeded, I think we were engaged about two weeks; I am not quite certain. The first three attempts did not do any better than the old way, although they were upon a new principle from former usage, that is, by a different mode. The plan last adopted was entirely different from the first. I knew of a ballers' rolls that had been made pretty much upon the same principle as the mode and manner which we first tried, and which with us did not succeed better than the old way. The difference between the mode that failed and the mode now used is, the latter is by inclined gates, and the former was by perpendicular gates. By my station being at the gate, and seeing the metal running, I believe it was me that told when the gate was at the proper degree of inclination or angle. The idea of an inclined gate was not entered into on Mr. Harley's first suggestion, but was suggested by our experiments. Mr. Harley's wages were advanced partly on account of the benefit of this improvement, but I cannot say whether or not this was made known to him during the time we were making the experiments. He lost no time, but was paid his usual wages. After the discovery was made, Mr. Harley said to me that Kingsland, Lightner & Cuddy ought to take out a patent for it, and I proposed it to Mr. Lightner. Harley continued some two or three months, more or less, after that, and during that time this mode of casting rollers was carried fully into effect, and used as much so as at this time, and I never

heard Harley express any dissatisfaction at their so doing. The principle of the inclined gate was done between Harley and myself in its application to casting chilled rollers; as far as I can recollect, it was done between us. I cannot say who first suggested this application, whether Harley or I, but the application of it was done between us. The gate perpendicular to the bottom of a cylinder is not a new invention, but I do not know that ever it was applied or tried before to cast chilled rollers. Mr. Harley suggested the first experiment which we tried, and when that did not succeed I do not recollect that he suggested the second mode of application. I do not recollect that I made such suggestion. The second did not answer, and a third was tried, but I am also uncertain which of us made the suggestion. I do not now recollect that I suggested either the second or third which was tried, neither do I recollect that I suggested the propriety of trying to cast the chilled rollers by an inclined gate. Harley did suggest the attempt of casting chilled rollers by the inclined gate first, and when it proved successful he did not then say any thing about who was the inventor. He said he knew that I had as much ado with it as he had.

He told me he thought the company ought to take out a patent but said nothing about upon what terms they should do so, I never heard Harley say that he was the whole inventor of this improvement until after he left the employ of K. L. and Cuddy. I consider this a valuable improvement and was spoken of as such, before he left the company. I do not know that among the hands he publicly claimed to be the inventor; he never told me so. The inclination of the gate cannot be changed or altered during the time of any one casting of a roll. An inclined gate is not a new invention for many other kinds of castings, but I never before this knew it applied to cast chilled rollers. In the application of the inclined gate to casting chilled rollers, the gate is put to the lower end of the body of the roll. In casting for plaw and plates and many castings, an inclined gate has been used. But I never knew the inclined gate to be used in casting any cylinder before this, nor never saw it used before this, so as to give the metal a rotary or circular motion, while in the mould. Some rolls were spoiled in making these experiments, I think they were scarcely as good as if they had been done by the old plan; we often failed on the old plan, and on an average about one out of four or five. I think we lost either one or two in making these experiments. I never said that Harley was the sole inventor.

To the best of my knowledge, James Harley first suggested to try the inclined gates and we then tried it. But at first there was no intimation of an inclined gate until we had made the former attempts. Our intercourse and communication together was full and free.

Should the defendants be compelled to abandon the use of this new principle, after having been adopted and used with the full know-

edge and approbation of Mr. Harley, it would not be less than 60, or 70 dollars.

PHILLIP KINGSLAND.

Sworn and subscribed to before me, in the office of R. Biddle, Esq., in presence of the parties.
Febuary 25, 1836.

M. B. LOWRIE.

Endorsed: No. 9, Oct. T. 1835. Parry & Higby vs. Lightner and Cuddy, Phillip Kingsland's deposition.

Filed April 28th, 1837.

WESTERN DISTRICT OF PENNSYLVANIA, *s.s.*

Lawrence Kingsland, Isaac Lightner and James Cuddy, partners, doing business under the firm of Kingsland, Lightner and Cuddy, were summoned to answer Wm. T. McClurg, John C. Parry and Enoch J. Higby, partners, doing business under the firm of McClurg, Parry and Higby, assignees of James Harley, in a plea of trespass on the case: for that whereas by certain letters patent made out and issued and delivered in due form of law, in the name and under the seal of the United States, and bearing test of the president thereof, dated the third day of March, A. D. 1835, and in court to be produced, was granted unto James Harley, a citizen of the United States, and to his heirs, administrators and assigns, for the term of fourteen years from the said date, the full and exclusive right and liberty of making, constructing and using, and vending to others to be used, his new and useful improvement in the mode of casting chilled rollers and other metalic cylinders and cones; and whereas on the sixteenth day of March, A. D. 1835, by his deed in writing made at Pittsburgh, on the same day, and to be produced in court, the said James Harley did in due form of law, make over and assign unto the said plaintiffs, their heirs, executors, administrators and assigns, all his right, title, interest and claim for himself and his administrators in and to the said improvement, to be held and enjoyed by the said plaintiffs, in as full and complete a manner as he, the said James Harley held and enjoyed and was entitled to the same, which deed of assignment was duly delivered to the said plaintiffs, and which is duly recorded in the patent office of the United States, in vol. 6, pages 219, 220, 221, to wit, on the 20th day of May 1835. And the said plaintiffs do in fact say that the defendants, well knowing the premises, but contriving and fraudulently intending to injure the plaintiffs in this behalf, did on the first day of A. D. 1835, and at divers days between that day and the purchase of this writ, to wit in the western district aforesaid, without consent of the said plaintiffs in

that behalf first obtained in writing or otherwise, unlawfully devise, make and use the said improvement, so invented by the said James Harley and secured to him as aforesaid, contrary to the form of the act of Congress of the United States, made and passed on the 21st day of February, 1793, entitled "An act to promote the progress of useful arts, etc," and against the privileges so granted. By means whereof the said plaintiffs are injured, and have sustained actual damage to the amount of $20,000, and therefore they bring this suit.

W. H. LOWRIE,
Plaintiff's Attorney.

JOHN DOE and RICHARD ROE, pledges, etc.

[Upon which is the following endorsement.]

No. 9, Oct. Term, 1835. McClurg, Parry and Higby vs. Kingsland, Lightner and Cuddy. Narr in case. Filed May 26, 1837.— It is agreed that this Narr be substituted for the one heretofore filed. R. Biddle, May 25, 1837. Defendants plead not guilty, R. B. Plaintiffs *simile ter* &c. May 25, 1837, W. H. L. LOWRIE.

Western District of Pennsylvania.

IN THE CIRCUIT COURT OF THE UNITED STATES.

MCCLURG, PARRY & HIGBY,
vs.
KINGSLAND, LIGHTNER & CUDDY.

And now to wit, June 16th, 1838, it is hereby agreed between the parties hereto that the depositions of witnesses to be read in evidence on the trial of the above cause shall be taken before Alderman M. B. Lourie, at his office in Pittsburgh, on the 20th day of June, instant, at 9 o'clock, A. M. and that the depositions so taken shall be filed and read in the trial, subject to all exceptions to the competency of the testimony and of the witnesses. Notice to be given to the defendants forthwith.

CHARLES S. BRADFORD,
For Defendants.
W. H. LOURIE,
For Plaintiffs.

IN THE CIRCUIT COURT OF THE UNITED STATES.

MCCLURG, PARRY & HIGBY,
vs.
KINGSLAND, LIGHTNER & CUDDY.

In pursuance of an agreement of attornies of the parties hereto annexed, I, M. B. Lourie, the alderman therein named, do pro-

ceed to take the testimony of witnesses to be read in evidence in this suit.

Matthew Stewart, a witness of lawful age, being duly sworn, deposeth and saith: I am 35 years of age and am a moulder to occupation, and have been employed in that business from I was 11 years of age in Glasgow Scotland, and for the last six years in America in the same occupation. I am acquainted with the process of casting chilled rollers, and have seen them cast at South Boston at the foundry of Cyrus Alger by two men named John Mann and Gyel Pratt, who are the only persons I ever saw casting such at that place, about sixteen months ago, and about two months before I left that place. I was requested by Robert Taylor, my brother-in-law, who lived in Dover, New Jersey, to communicate to him the mode and manner made use of by Mann & Pratt in casting chilled rollers. I then took particular notice of the manner in which it was done by them. The tin model was shewn in which Alderman Loury has marked, is a true model of the plan used by those men in casting chilled rollers during all the time I was there, which was about 3 years, and when I left there, about 14 months ago, they used the same, and during all the time I was there they used no other plan until while I was there they annexed to their former plan the iron hoop and rod, which accompanies said tin model. The object and introduction of said iron hoop is to prevent slag from lodging against the inner part of the chill or mould and outside of the roll while casting, the slag being drawn up by the hoop and removed, the said hoop being always kept below the surface of the liquid metal and raised with it to clear off the slag or before stated, and in its operation it causes no rotary motion in the metal. The said iron ring constituted a considerable improvement in the former plan of casting rollers, and they were made with more certainty, and when a deficiency in the roll occurs they plug up the deficiency when turning the roll, and they are in the habit of not sending away rolls until they turn them to make them complete. I never saw any mode for casting chilled rollers on any other plan than this way where I had been, and in order to protect the face of the person handling the hook from the heat when pouring in the metal, they had to use a covered ladle, out of which they poured the metal into the tube or runner, and never saw the iron hoop or rod used any where but at the works of Alger.

Since I came to Pittsburgh I have seen chilled rollers that had been cast on Harley's plan, but never saw them casting any. I have examined the principle of Harley's plan and understand it, and I consider it superior to any thing I ever saw at Alger's and different, and there was no flask on his premises when I left, that would work on Harley's plan. I never saw any rolls cast on the plan of Harley's any where, nor did I ever hear of such a plan that would give a rotary motion to the metal while casting until I heard of Harley's plan. The business in Mr. Alger's works is conducted by Captain Howard. I do not know whether he himself is

a practical workman or not. I understood from the hands that Mr. Alger had formerly worked at the business.

Cross Examined by Mr. Bradford.

I have never seen Harley's model. But from what has been represented to me, the tin model on which Alderman Lourie now writes his name, called No. 2, is a model of what I have understood to be Harley's plan.

MATTHEW STEWART.

Sworn and subscribed before me, in presence of the attornies of the parties, this 20th day of June, 1838.

M. B. LOURIE.

John Callender, being duly sworn, doth depose and say, I am a moulder to occupation, am 34 years of age, have been engaged as as a moulder for upwards of 22 years in Scotland, England, and America. I have been two years in America since last April, and I wrought at Alger's works in South Boston for about two months in the latter end of 1836. The model now before me, No. 1, referred to in Matthew Stewart's deposition just now taken and which I have heard, is the model, and the manner of working in casting chilled rollers at Alger's works as stated by said Stewart. There is no rotary motion given to the metal while casting by this plan, and I never saw them use any other plan. The operation and effect of a plan that would give a rotary motion to the metal while rising in the flask would entirely supercede the necessity of the hoop and rod used at Alger's works.

JOHN CALLENDER.

Sworn and subscribed before me, in presence of the attornies of the parties, this 20th day of June, 1838.

Endorsed: No. 9 of October T. 1835. McClurg & Co. assignees, *vs.* Kingsland & Co. Deposition of Stewart and Callender filed May 30th, 1839.
Justice's fees $2 00.

Deposition of Cyrus Alger

I, Cyrus Alger, of Boston, in the district of Massachusetts, manufacturer of iron, having been examined, cautioned and sworn, do hereby depose as follows:

I have been engaged extensively in the manufacture of iron for the last thirty-eight years. During that time I have frequently cast chilled rollers. The casting of iron rollers was introduced into this country by Mr. Seymour, an Englishman, who took out a pa-

tent about 1800. His process was to cast the whole roller in the cylinder or chill. I obtained a patent in 1811 for an improvement in the casting of iron rollers. My improvement consisted in having the flask or cylinder (which was divided longitudinally into two parts, bored or turned smooth on the interior surface,) of only such length as was required for the body of the roller, while the flasks for the necks or gudgeons were of such length and size as to have a coating of sand on their inside surfaces, on which were moulded the necks or gudgeons. These gudgeon flasks were secured to the main flask or cylinder by means of pins and keys at each end thereof. The melted iron or fluid metal was conveyed to the lower extremity of the mould by means of a pipe, made in sections longitudinally, and coated on the inside thereof with clay; the top or upper end of which pipe was funnel-shaped and the sections were secured together by hoops or rings or bolts and nuts.

Having placed the roller mould, with one of the gudgeon flasks attached thereto with the flask, down the conveying tube or pipe, was attached in a particular position and secured. A circular board of about the circumference of the body of the roller was put in, which rose with the fluid metal to the top of the cylinder. It was then removed, and the flask for the upper neck or gudgeon was then attached to the upper end of the main cylinder, and the metal poured in until it was filled and the roller completed. The object in having the board was to prevent impurities from being formed on the body of the roller.

In 1820, or thereabouts, I used a cylinder made of one piece bored out smooth, for casting the main body of rollers in, instead of having it made in two parts as heretofore, (as before stated in my letters patent,) but I did not deem this improvement such as warranted a patent.

I have usually and in many cases, since 1811 and before 1835, placed the conveying tube or pipe in such manner, and the discharge of it into the mould in such line of direction as would tend to give the fluids, when poured in, a rotative or circular motion as it rose in the mould; and I pursue that plan whenever I cast a roller; such direction being tangentically to the axis of the roller; and I also use a circular iron hoop attached to a handle, which is gradually drawn up out of the mould as the metal flows in; said hoop being kept a little below the surface of the flowing metal; and by this means the impurities being thrown into the centre of the roller, by the circular motion produced by the position before stated of the conveying tube or pipe, are kept in that position, and from the sides of the roller or cylinder of the mould; but I have not deemed the particular line of direction of introducing the metal, nor the using the hoop as before stated, of sufficient utility to merit a patent therefor, as by the means before stated in my letters patent, I have been enabled to furnish rollers, the bodies of which have been hard or chilled, and the necks or gudgeons soft or unchilled—the whole being fair and free from impurities, and having

the necks cast soft, on the plan patented by me, they combine strength and durability.

I have examined the specification of the patent hereto annexed, marked A, and, in my opinion, it contains nothing new or different from what I have practised for a great many years, unless it be that the fluid metal is introduced into the mould by several tubes instead of one.

CYRUS ALGER.

UNITED STATES OF AMERICA,
District of Massachusetts, sct.

City of Boston, the thirteenth day of November, in the year of our Lord eighteen hundred and thirty-seven. On this date personally appeared before me the subscriber, a commissioner duly appointed to take depositions in the United States courts, and which appears by the certificate hereto annexed, the deponent, Cyrus Alger, whose name is above written, and being by me carefully examined, cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, he subscribed the foregoing deposition and testimony, and made oath to the same—the same having been reduced to writing by me.

The above deposition and testimony are taken to be used in a civil cause now depending in the circuit court of the United States for the western district of Pennsylvania, in the third circuit wherein William T. McClurg, John C. Parry and Enoch T. Higby, partners, doing business under the firm of McClurg, Parry & Higby, assignees of James Harley, are plaintiffs, and Lawrence Kingsland, Isaac Lightner and James Cuddy, partners, doing business under the firm of Kingsland, Lightner & Cuddy, are defendants; and was taken at the request of defendants. The testimony of the said Alger is necessary in said cause, and the cause of the taking thereof is, that he lives at a greater distance from the place of trial than one hundred miles, and out of the western district of Pennsylvania. I am not of counsel or attorney to either of the parties, nor interested in the event of the above cause. No notification to the adverse party was first made out, and served upon them, or any attorney of theirs, because neither is within one hundred miles of the place of this caption.

GEORGE S. HILLARD,
Commissioner, &c. &c.

Commissioner's fees	-	$5 00
Deponent's do	-	1 25

I, Francis Bassett, clerk of the courts of the United States for the district of Massachusetts, hereby certify that George S. Hillard, whose signature above written is his own handwriting, is one of the commissioners appointed by the circuit court of the United

States, for the first circuit, to take bail, affidavits, &c., according to the statutes in such cases made and provided.

In testimony whereof I have hereto set my hand and affixed the seal of said circuit court, this seventeenth day of November, A. D. 1837, and in the sixty-second year of the Independence of the United States of America.

[L. S.]

FRANCIS BASSETT, *Clerk.*

Deposition of John C. Mann.

I, John C. Mann, of Boston, in the district of Massachusetts, iron founder, being first examined, cautioned, and sworn, do hereby depose as follows:

I have been employed about fifteen years in the foundy of Mr. Cyrus Alger, and am now employed there, and am superintendant of the foundry department. I have often cast chilled iron rollers; and for the last year or two, before I took care of the foundry, I made all that were made at the foundry. The following is the process which I employed in making chilled iron rollers for many years before the year 1835, and since: the body of the roller was cast in an iron cylinder, called a chill, and the necks were cast in dry sand; the iron was poured into the chill by a tube inserted in the lower neck; this tube is perpendicular in the parts where the iron is poured in, and rises higher than the chill; at the bottom, it turns off horizontally towards the lower neck at a right angle; when it reaches the sand, it is curved horizontally, and nearly parallel to the side of the mould, and thus introduced into the mould. The object of this arrangement is to the fluid metal a spiral motion, which will throw the dirt into the centre, and prevent it from adhering to the chill. I have sometimes, previous to 1835, used two of these tubes instead of one. I have made iron rollers often, in the above manner, before 1835, as long back as ten or twelve years ago.

The manufacture of chilled iron rollers has been carried on extensively in Mr. Alger's foundry for many years past. He has made more than have been made at any other foundry in this part of the country, so far as I know.

JOHN C. MANN.

UNITED STATES OF AMERICA,
District of Massachusetts, ss.

CITY OF BOSTON, *the fifth day of December, A. D. eighteen hundred and thirty-seven.*

On this date, personally appeared before me, the subscriber, a commissioner duly appointed to take depositions in the United States courts, the deponent John C. Mann, whose name is above written, and being by me carefully examined, cautioned, and sworn

to tell the truth, the whole truth, and nothing but the truth, he subscribed the foregoing depositions and testimony, and made oath to the same, the same having been reduced to writing by me in his presence.

The above depositions and testimony is taken to used in a civil cause depending in the circuit court of the United States for the western district of Pennsylvania, in the third circuit, wherein Wm. T. McClurg, Jno. C. Parry, and Enoch J. Higby, partners, doing bnsiness under the firm of McClurg, Parry, & Higby, assignees of James Harley, are plaintiffs, and Laurence Kingsland, Isaac Lightner, and James Cuddy, partners, doing business under the firm of Kingsland, Lightner & Cuddy, are defendants, and was taken at the request of the defendants.

The testimony of the said Mann is necessary in said cause; and the cause of the taking thereof is that he lives at a greater distance from the place of trial than 100 miles, and out of the said western district of Pennsylvania. I am not of counsel or attorney to either of the parties, nor interested in the event of the above cause; no notification to the adverse party was first made out and served upon them, or any attorney of them, because neither are within one hundred miles of the place of this caption.

GEO. S. HILLIARD.

Commissioner's fees,	$3 00
Deponent's fees,	1 25

McClurg, Parry, & Higby
vs.
Kingsley, Lightner, & Cuddy.

Motion for a new trial, on the ground that the verdict is against law, evidence, and the charge of the court, and in defiance thereof.

R. BIDDLE,
For Plaintiff.

25th November, 1839.

Commission to Weldon & Agnew, of Wheeling.

In the Circuit Court of the United States for the Western District of Pennsylvania.

No. 9, of October Term, 1835.

McClurg, Parry, & Higby,
vs.
Kingsland, Lightner, & Cuddy. } Case.

The President of the United States to David Agnew and S. T. Weldon, Esquires, of Wheeling, in the State of Virginia.

Know you, that in confidence of your prudence and integrity, we have given unto to you, and by these presents, do give unto to

you, full power and authority, in pursuance of a rule lately made in the said circuit court of the United States in and for the Western District of Pennsylvania, in a certain action on the case therein depending, wherein the said McClurg, Parry & Higby are plaintiffs, and Kingsland, Lightner & Cuddy are defendants, to call before you, at a certain day and place by you for that purpose to be appointed, all and every person or persons who may be named to you by the said Kingsland, Lightner, & Cuddy, as witnesses in the said action, and then and there to examine them on their respective oaths and affirmations on certain interrogatories, hereunto annexed, touching the premises, and to reduce their testimony to writing; and when you shall have so done, you are to send the same to the said court closed up, and under your seals, plainly and distinctly set, together with this writ.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at Pittsburgh, this fifth day of March, A. D. 1840, and in the sixty-third year of the Independence of the said United States.

E. J. ROBERTS, *Clerk.*

Copy of Interrogatories Attached.

UNITED STATES OF AMERICA, *ss.*

McCLURG, PARRY, & HIGBY,
vs.
KINGSLAND, LIGHTNER, & CUDDY.

In the Circuit Court of the United States for the Western District of Pennsylvania, in the Third Circuit.

The defendants enter a rule for a commission to take testimony in Wheeling, in the State of Virginia, and nominate, on their part, David Agnew, of Wheeling aforesaid, commissioner.

JAMES FINDLAY,
Attorney for Defendants.

E. J. ROBERTS, Esq., *Clerk.*

14th February, 1840.

Interrogatories, on part of the Defendants, to be put to Thomas Sweeny, Esquire, a witness to be called on their behalf.

1st. Are you acquainted with the parties to this action?

2d. Were you ever in the employ of the defendants, or of any of them, previously to the year 1835? If yea, when, and how long, and in what capacity.

3d. When in the employ of defendants, or any of them, did you ever hear a certain Samuel Leonard speak to any of the persons in the same employ of a particular method of making chilled rollers? If yea, state when, to whom, if to yourself, or to others, and also

what that method was, result it was to produce, and how it was to produce it.

4th. Was the suggestion of the said Leonard attended to or improved on by any one to whom it was made? If nay, why not?

5th. Do you know any other matter or thing, relevant to the issue in this case, material for the defendants? If yea, state it as particularly as if thereunto specially interrogated.

JAMES FINDLAY,
Attorney for Defendants.

McCLURG et al,
vs.
KINGSLAND et al.

Thomas Sweeny, Cross Examined.

1st. Were you in the employment of the defendants when the casting of chilled rollers was first commenced by them, or a part of them? If yea, please tell, to the best of your knowledge, who cast the first ones that were made.

2d. Who was it who gave the directions how to make the flask and chill? If it was done under the instructions of Mr. Samuel Leonard, please state how they were made.

3d. Please to state if that part of the flask containing the lower neck and coupling was in one piece, and likewise how much sand room there was between the pattern and flask, and also whether that part of the flask was round or square.

4th. Please state whether the fluid metal entered in at the neck or the coupling of the roller.

5th. Who cast the first chill and flask that was made by the defendants?

6th. Was the first roller that was made stirred, in order to produce the motion? And if so, who gave the directions to stir it?

7th. Was Mr. Leonard present when the first roller was cast? and did he give any directions to the hand or hands who made it?

8th. Was the first one made a large or a small one?

9th. Have you made any of the rollers, either soft or hard, since 1835, on the principle of the rotary motion, patented by James Harley?

10th. Did Mr. Leonard instruct the defendants how to make the flask and chill; and did those who made it, follow those instructions?

11th. Did the metal enter at one or two places; and in what particular direction did it enter?

12th. Are you acquainted with the principle patented by James Harley? If yea, state where you first seen it in operation; and whether it supercedes the mode of casting rollers used by Kingsland, Lightner & Co., while you were in their employment, previous to 1834.

13th. Please state how much sand room is required between the flask and pattern to cut the runner and slanting gates in Harley's plan; and, also, if it is not necessary to have a parting in the flask in order to make said runner and slanting gates.

14th. Do you know of any rollers being cast on the rotary principle patented by James Harley, previous to October, 1834? If yea, state where, and by whom, and at what time, and how many.

15th. Do you know any matter or thing, other than upon which you have been interrogated, that will be of use to the plaintiff? If yea, please state fully.

The plaintiffs file the above cross interrogatories, and name S. T. Weldon as commissioner.

SHALER, *Plaintiffs' Attorney.*

True copy. E. J. ROBERTS, *Clerk.*

Deposition of Thomas Sweeny, produced and examined on the 25th day of March, in the year of our Lord one thousand eight hundred and forty, at the office of George Dulty, Esq., mayor of the city of Wheeling, Virginia, by virtue of a commission issuing from the "circuit court of the United States for the western district of Pennsylvania in the third circuit," directed to David Agnew, S. S. Welden, for the examination of the said Thomas Sweeny in a certain cause depending in said court, wherein McClurg, Parry, & Higby are plaintiffs and Kingsland, Lightner, & Cuddy, defendants.

Thomas Sweeny, of the city of Wheeling, Virginia, moulder, aged about thirty-four years, being produced, sworn, and examined on behalf of the defendants, deposeth as follows:

1st. To the first interrogatory on the part of the defendants, he answers as follows: I am acquainted with all the parties.

2d. To the second interrogatory on the part of the defendants, he answers as follows: I was in the employment of Kingsland, Lightner, & Lightner, members of the firm of Kingsland, Lightner, & Co., in the capacity of moulder, from soon after they commenced business on Liberty street, Pittsburgh, until, I think, the spring of 1828.

3d. To the third interrogatory on the part of the defendants, he answers as follows: I recollect distinctly that Samuel Leonard directed myself and others to introduce the metal in casting rolls in at the lower end, so as to make the metal come up in the chill with a swyirl, (meaning a rotary motion,) which would form a concave in the centre of the fluid metal in the chill, causing the dirt or scruff to float in the centre, and of course produce a clean surface on the roll when cast. This conversation with Samuel Leonard occurred about the time or shortly after the said Kingsland, Lightner & Co., commenced making chilled rolls, which was during the early part of my employment with them. Leonard stated that that was the way they cast rolls in England, and that they scarcely ever lost one. I recollect the foregoing distinctly from the circumstance that the word "swyrl" became a by-word among the workmen, and they called Samuel Leonard the "swyrler."

4th. To the fourth interrogatory on the part of the defendants, he answers as follows: The directions of Samuel Leonard were not attended to, for the reason that the workmen disliked him for his continual boasting of English modes and English workmen, and to the disparagement of Americans. We afterwards produced the rotary motion by stirring the fluid metal as it rose in the chill with a stick, the upper neck and coupling being left off for that purpose when the chill was full, the neck and coupling was immediately put on and filled up with shanks.

5th. To the fifth interrogatory on the part of the defendants, he answers as follows: I cannot at present recollect any matter which I suppose would have any bearing on the case.

Thomas Sweeny Cross-examined.

1st. To the first interrogatory on the part of the plaintiff, he answers as follows: I was in the employment of Kingsland & Lightner when they first commenced casting chilled rolls, and do not remember distinctly who made the first roll, but think it was my brother Campbell Sweeny and myself.

2d. To the second interrogatory on the part of the plaintiffs, he answers as follows: Mr. Lawrence Kingsland and Samuel Leonard, to the best of my recollection, consulted together and gave directions as to the length, diameter, and thickness of the chill; the remaining fixtures were made by direction of Mr. Kingsland and the moulders.

3d. To the third interrogatory on part of the plaintiffs, he answers as follows: I think we used a part of the old roll flask which was in two pieces, but bolted together and made to fit the chill. The flask when bolted together was round. The sand room varied according to the shape of the neck and coupling, differing in size; the sand room would probably vary from three to six inches; I mean the large rolls.

4th. To the fourth interrogatoty on the part of the plaintiffs, he answers as follows: The fluid metal entered in at the lower end of the lower coupling.

5th. To the fifth interrogatory on the part of the plaintiffs, he answers as follows: I cannot say positively, but think my brother, Campbell Sweeny, and myself.

6th. To the sixth interrogatory on the part of the plaintiffs, he answers as follows: The first roll cast was not stirred.

7th. To the seventh interrogatory on the part of the plaintiffs, he answers as follows: I think Mr. Leonard was present, but do not remember that Mr. Leonard gave any directions.

8th. To the eighth interrogatory on the part of plaintiffs, he answers as follows: I cannot say positively, but think the first roll made was a small one. The flask for the neck and coupling of the small roll was square, the sand room varying from two and a half to three and a half inches.

9th. To the ninth interrogatory on the part of the plaintiffs, he answers as follows: I have not made any rolls on the principle patented by Mr. Harley.

10th. To the tenth interrogatory on the part of the plaintiffs, he answers as follows: Messrs. Leonard & Kingsland consulted together as to the length, thickness, and diameter of chill, the other parts were made by the direction of Mr. Kingsland and the moulders to the best of my recollection.

11th. To the eleventh interrogatory on the part of the plaintiffs, he answers as follows: The metal entered at the bottom of coupling through a crooked spout.

12th. To the twelfth interrogatory on the part of the plaintiffs, he answers as follows: I have never seen his patent and specification, nor do I know anything personally on the subject.

13th. To the thirteenth interrogatory on the part of plaintiff, he answers as follows: Not understanding the principle I do not know whether a parting is necessary or not.

14th. To the fourteenth interrogatory on the part of the plaintiffs, he answers as follows: I do not know of any rolls being made on any other principle than that used by Kingsland, Lightner & Co., when in their employment.

15th. To the fifteenth interrogatory on the part of the plaintiff, he answers as follows: I cannot at present think of anything material to this case.

THOS. SWEENEY.

We, David Agnew and S. S. Weldin, commissioners appointed by the circuit court of the United States for the western district of Pennsylvania, to take the depositions of Thomas Sweeny in a cause pending in said court, wherein McClurg, Parry and Higby are plaintiffs, and Kingsland, Lightner and Cuddy are defendants, do hereby certify that the said Thomas Sweeny appeared before us at the office of George Dulty, Esq. mayor of the city of Wheeling, and the oath having been administered to him according to law, by the said mayor, he did respond to the interrogatories as detailed in the foregoing pages marked 1, 2, 3, 4, 5, and hath thereunto signed his name.

Witness our hands this 25 March, 1840.

DAVID AGNEW,
S. S. WELDIN.

UNITED STATES OF AMERICA,

Western District af Pennsylvania, ss.

KINGSLAND, LIGHTNER & CUDDY, *ad'ms* McCLURG, PARRY & HIGBY.

In the Circuit Court of the United States for the western district of Pennsylvania in the third circuit.

The defendants enter a rule for a commission to take testimony in Boston, Massachusetts, and nominate on their part George S. Hilliard, Esq. of Boston, as commissioner.

JAMES FINDLAY,
Attorney for Defts.

E. J. ROBERTS, ESQ. C. C. U. S.
26 February, 1840.

Interrogatories to be put to witnesses on the part of defendants.

1st. Are you acquainted with the parties to this suit?

2d. Are you acquainted with the process of making chilled iron rollers? If yea, state how you acquired your knowledge, and the various methods of making them that you have used or seen used. What was the result aimed at by each method, and how it was produced, and how long such methods were in use—if previously to 1835, how long before?

3d. Do you know whether chilled iron rollers have been made in the foundry of Mr. Cyrus Alger, in South Boston? If yea, state what you know of the methods used there in making them. How long such methods have been in use to your knowledge; whether previously to 1835 or not.

4th. Did you know a certain Matthew Stewart and a certain John Callender? Were they ever employed in the foundry of Mr. Cyrus Alger in South Boston? If yea, in what capacity? What opportunities had they, or either of them, of becoming acquainted with the methods of making chilled iron rollers used in the said foundry?

5th. How long were said Stewart and Callender respectively employed in the said foundry? Are they, or either of them, there now? If nay, when and why did they leave the said foundry?

6th. Was there an iron hoop used in said foundry in casting chilled iron rollers? If yea, how was it used—was there a handle attached to it, and how was such handle, if any, attached to the hoop? Did the said hoop or handle, or both, impede or in any manner interfere with the rotary motion of the metal in the chill?

7th. Would the same flask which is used in casting chilled iron rollers without giving the rotary motion to the metal, serve for casting them, or the plan or method, or giving a rotary motion to the metal?

8th. A certain James Harley claims to be the inventor of an improved mode of casting chilled rollers, which he specifies to be "that the tube or tubes, or passages called gates, through which the metal is to be conveyed into the moulds, shall not enter the mould perpendicularly at the bottom, but slanting or in a direction approaching to a tangent of the cylinder, or if the gates enter the moulds horizontally or nearly so, that they shall not enter in the direction of the axis of the cylinder, but in a tangent form or inclining towards a tangent of the cylinder." Is there any difference between his mode of casting chilled rollers, as are here described, and the methods in use previously to 1835? If yea, what is the difference in the principle?

9th. Do you know any other matter or thing relavant to the issue in this case material to the defendants? If yea, please to state it as particularly as if thereunto specially interrogated.

JAMES FINDLAY,
Att'y for Deft's.

True copy.
E. J. ROBERTS, *Clerk.*

McCLURG, PARRY & HIGBY,
vs.
KINGSLAND, LIGHTNER & CUDDY.

The plaintiffs file the following cross interrogatories and nominate Thomas A. Dexter, Esq. as commissioner on their part:

1st. Are you a practical mechanic or tradesman? If yea, of what kind and how long have you worked at your business?

2d. Have you ever moulded or witnessed the moulding or the casting of chilled iron rolls? If yea, state the places severally and the methods you have witnessed at each place respectively aud the time of each different method.

3d. Have you ever been in the employ of Cyrus Alger, of Boston, Massachusetts? If yea, in what capacity, how long and during what years? If you are now connected with him in business, state how or in what way.

4th. Have you ever moulded or witnessed the moulding or casting of chilled iron rolls at the foundry of Cyrus Alger previously to January, 1835? If yea, how long before that time? Describe the 1st method you saw practised there, and state particularly how the metal entered the mould, how long that first method was followed and the year you first saw said method in use. According to the first method you witnessed, did the iron enter at the top or the bottom of the mould? Did it enter horizontally? If horizontally, did it flow in a direction towards the centre of the roll, or in what direction did it flow into the mould? Did the metal enter at the coupling or the neck of the roll, or both? In how many parts was the flask for the lower neck and coupling? If more than

how was it divided? How many inches sand room was there between the lower neck and coupling and in the flask? Was the flask of iron or of wood? Was it round or square? Would the flasks used in this first method serve to cast chilled rolls according to the mode they are here cast upon, without alteration?

5th. Did you, previously to 1835, mould or witness the moulding of chilled iron rolls at Cyrus Alger's foundry on any other method than that you have described as the first mode practised there? If yea, please state in what particulars the subsequent modes of casting chilled rolls differed from the first. Whether that difference is such as you would term a change of principle. Whether the changes that have taken place required any alterations in the flasks. If alterations were made in the flasks, state what were those alterations, and at what were those alterations made. Was there any change in the mode of introducing the metal? State what was that change particularly.

6th. Did you ever see chilled rolls cast by introducing the metal at the bottom of the mould—the metal flowing up perpendicularly? If yea, state when, at whose foundry. Do you know whether this mode is now in use any where? Could chilled rolls be cast on this mode (in your opinion) as well as the other modes now in use? Were they moulded at C. Alger's foundry at any time in this way? If yea, state when, whether since or previously to 1835, Jan. 1st.

7th. Was the mode of casting chilled iron rolls ever kept secret or done in such a manner that the moulders employed at the place could not see the operation at any place to your knowledge? If yea, where and at what time;—if at the foundry of Cyrus Alger, state how and at what time particularly.

8th. Could you tell how a roll was cast by seeing it with the casts or runner upon it? If aye, state how.

9th. Do you understand the mode of casting chilled iron rolls, patented by James Harley? If yea, please describe what you understand to be his mode, or the one for which he has taken out a patent. When did you first hear of Harley's patent for casting chilled iron rolls, and from whom?

10th. Did Cyrus Alger, or any body for him to your knowledge, make any alterations in his chills or flasks for moulding chilled iron rollers at any time? If yea, state what those alterations were, when they were made, what were the object for which they were made, and whether they were alterations that would change the direction of the metal in entering the mould, state the time of said alterations; describe the flask now in use.

11th. Have you ever seen a hoop used in casting chilled iron rolls? If yea, state at whose foundry; if at Cyrus Alger's, state when, if before 1st January, 1831, how long, if since. Is it still used what is the object of said hoop, and does it accomplish the object intended by it? If yea, describe it, and state how it is used.

12th. Is there a crane ladle used in Cyrus Alger's foundry, for pouring chilled rolls? If yea, is it covered when pouring said rolls, does it save the operator who uses the hoop from being injured by the heat? If yea, is that the object of it?

13th. Were you ever acquainted with a certain Robert Taylor, an Englishman? If yea, did he to your knowledge ever work at Cyrus Alger's foundry? If he did, in what capacity, is he now in their employ? If nay, when did he leave said employ, and what was the reason that he left said employ? Was he any relation to Matthew Stewart, spoken of above? If yea, state what relation he was.

14th. Discribe the mode most used for casting chilled iron rolls at Cyrus Alger's foundry, previously to January, 1835; was the sand mode followed at other foundries at that time?

15th. State whether, was the mould for the upper neck and coupling of the roll always on the top of the mould before the iron was run into the body of the mould? or was it placed on afterwards? Did you ever see a roll cast by putting the flask containing the mould for the upper neck and coupling on after the body of the roll was filled? If yea, state when and where, was it ever done so at Alger's foundry? How is it in this respect when the hoop is used, how is the hoop taken out of the mould? Is it through the sinking head? If yea, discribe how.

16th. Do you know any other matter or thing relavant to the issue in this case, material to the plaintiffs? If yea, state it as particularly as if thereunto specially interrogated.

Copy of Commission.

IN THE CIRCUIT COURT OF THE UNITED STATES,
In and for the Western District of Pennsylvania,
in the third Circuit.

No. 9, of October Term, 1835.

McCLURG, PARRY and HIGBY,
vs.
KINGSLAND, LIGHTNER and CUDDY. } Case.

The President of the United States to George S. Hilliard, Esq., of Boston, Massachusetts, and Thomas A. Dexter, Esq., of same place commissioners to take testimony in the above case.

Know you, that in confidence of your prudence and integrity, we have given unto you and by these presents do give unto you, full power and authority in pursuance of a rule, lately made in the circuit court of the United States, in and for the western district of Pennsylvania, in a certain action on the case therein depending, wherein the said McClurg, Parry and Higby, are plaintiffs, and

Kingsland, Lightner and Cuddy, are defendants, to call before you at a certain day and place, by you for that purpose to be appointed, all and every person and persons who may be named to you by the said plaintiffs and defendants as witnesses in the said action, and then and there to examine them on their respective oaths and affirmations on certain interrogatories hereto annexed touching the premises, and to reduce their testimony to writing; and when you shall have so done, you are to send the same to the said court, closed up and under your seals, plainly and distinctly set together with this writ.

Witness the honorable Roger B. Taney, Chief Justice of the
[L. S.] Supreme Court of the United States, at Pittsburgh, this seventeenth day of March, A. D. 1840, and in the sixty-fourth year of the Independence of the said United States.

E. J. ROBERTS, *Clerk.*

McCANDLESS, SHALER,
BIDDLE, FINDLAY.

Depositions of witnesses examined by virtue of a commission issuing from the circuit court of the United States, for the western district of Pennsylvania, in the third circuit, in the case of Kingsland, Lightner and Cuddy, adsm. McClurg, Parry and Higby.

Cyrus Alger, of Boston, manufacturer of iron, having been previously examined, cautioned and sworn, hereby depoes as follows, in answer to interrogatories on part of the defendants.

1. To the first interrogatory he says: I am not accquainted with the parties to this suit.

2. To the second interrogatory he says: I am acquainted with the process of making chilled iron rollers. When I first began its manufacture of iron in 1799, iron rollers were cast by Seymour's method which was to cast the whole roller in a cylinder or chill, I made an improvement for which I obtained a patent in 1811, by which the cylinder or chill was only of such length as was required for the body of the roller, while the necks or gudgeons were cast in seperate flasks or cylinders attached to the main one by means of pins and keys. The melted iron or fluid metal was conveyed to the lower extremity of the mould by means of a pipe made in sections longetudenally and coated on the inside with clay, the top or upper end of which pipe was funnel shaped, and the sections were secured together by hoops or hugs, or bolts and nuts. The melted metal has been introduced into the lower part of the mould in various points from the bottom of the square to the body or nearly to it and the discharge of it into the mould has been in such a line of direction as would tend to give the fluid when poured in a rotary or circular motion as it was in the mould. The direction was in a tangent to the axis of the roller or nearly so. And I also made use of a circular iron hoop attached to a handle, which was gradually

drawn up out of the mould as the metal flowed in, said hoop being kept a little below the surface of the flowing metal. The object aimed at by this method, was to prevent the scorice from attaching themselves to the surface of the cylinder, and throwing them into the middle by means of this circular motion. This method of giving a rotary motion to the melted metal has been used by me for more than fifteen yeais.

3. To the third interrogatory he says: This interrogatory I have answered in my reply to the second interiogatory.

4th. To the fourth interrogatory he says: I believe there were two such men who worked for me for a short time; I don't recollect in what capacity. I believe they were not employed in casting iron rollers, but were employed as second rate moulders; and I do not believe they knew any thing about the method of casting rollers.

5th. To the fifth interrogatory he says: Neither of them are now in the foundry; they were not there a long time, but I don't know how long, nor when they left; nor do I know, of my own knowledge, why they left. I believe Stewart was discharged for some misconduct.

6th. To the sixth interrogatory he says: There was an iron hoop used in said foundry in casting rollers; It was held by the handle in the mould, and drawn up as the metal rose. The handle was attached sometimes by a bail and sometimes directly to the hoop; It did not impede the rotary motion of the metal.

7th. To the seventh interrogatory he says: It would. The same flask can be used without giving a rotary motion to the metal.

8th. To the eighth interrogatory he says: I see no difference in principle between Mr. Harley's patent and the method which has been used in my foundry for fifteen or twenty years.

9th. To the ninth interrogatory he says: I know not.

Answers to Cross Interrogatories.

1st. To the first cross interrogatory he say: I have been engaged in the manufacture of iron over forty years.

2d. To the second cross interrogatory he says: I made these rollers for Seymour, or on Seymour's plan, in 1804 or 1805. I cast them at Easton till 1809; then I commenced making them on my plan, which I had a patent for in 1811, and I have made them ever since in Boston, up to the present time; I have seen no other modes.

3d. To the third cross interrogatory he says: This question need not be answered, as I am Cyrus Alger.

4th. Te the fourth cross interrogatory he say: In Seymour's process, the metal entered the top, and was poured right in without any direction to the centre, and the whole roller was cast in a cylinder. This method I have never used in my foundry in Boston. I began to work there in 1810, and cast them according to my own method above described. The metal was let in at or from the bot-

tom of the square up to the body. Sometimes it entered at the neck and sometimes at the coupling. The flasks for the lower end and coupling, is sometimes in two parts, and sometimes in one. From three to six inches of sand is all that is necessary to have round the neck; the flask is of iron, made round; this is the way they are now cast.

5th. To the fifth cross interrogatory he says: There never has been but one method of casting iron rollers in my foundry at South Boston, and that has before been described.

6th To the sixth cross interrogatory he says: I may have cast rollers in this way a great many years ago, but have not for many years. This mode is not now in use any where to my knowledge; I think this is not so good a mode of casting rollers as that now in use. I do not remember that this mode was ever practised at my foundry at South Boston.

7th. To the seventh cross interrogatory he says: The mode was never kept secret at my foundry to my knowledge.

8th. To the eighth cross interrogatory he says: I could tell whether it was cast with a rotary motion if I could see it with the cast or runner upon it; I could tell it by the direction of the runner.

9th. To the ninth cross interrogatory he says: I do not know what Harley's patent is; I have never seen a description of it; I first heard of it from some person from Pittsburgh, two or three years ago.

10th. To the tenth cross interrogatory he says: In 1811, as I have before stated, I took out a patent for alterations in the mould and method of casting chilled iron rolls as before stated; soon after that period, but I cannot state the exact time, I made such alterations as changed the direction of the metal in entering the mould, causing it to strike in the outer circle, which would create a rotary motion. I have before described the flask now in use.

11th. To the eleventh cross interrogatory he says: The hoop has been used a great many years in my foundry; I cannot state how long. It is still used there; its object is to throw the impurities of the metal into the middle of the roll. I have before described the manner of its use.

12th. To the twelfth cross interrogatory he says: We use a crane ladle in order to convey the metal into the mould, and we set up a screen in order to protect the man who holds the hoop.

13th. To the thirteenth cross interrogatory he says: I believe there was a person named Robert Taylor, who once worked for me, but I do not recollect any thing further about him, nor of his relationship to Stewart.

14th. To the fourteenth cross interrogatory he says: I have described the only method which has ever been used at my foundry in South Boston; I believe they have been in the habit of making rolls in the same way at other foundries, but do not know of it of my own knowledge.

15th. To the fifteenth cross interrogatory he says: Both of these modes have been followed formerly at my foundry; at present, we generally have the top neck placed on before casting. I have seen rolls cast by putting the flask, containing the mould for the upper neck and coupling on, after the body of the roll was filled; It has been done so at my foundry, and still is occasionally. In these cases, the hoop is taken out through the top of the chill before the mould for the upper neck is fastened on, in other cases, through the sinking head.

16th. To the sixteenth cross interrogatory he says: I know not.

CYRUS ALGER.

John C. Mann, of Boston, iron founder, being first examinied, cautioned and sworn, hereby deposes as follows, in answer to interrogatories on part of the defendants.

1st. To the first interrogatory he says: I am not acquainted with them.

2d. To the second interrogatory he says: I am acquainted with the process of making chilled iron rollers; I learned to make them in Mr. Alger's foundry in South Boston.

I went there as an apprentice in June, 1822, and have been in his employment ever since, and during all this period I have been more or less engaged in the process of casting iron rollers.

They have been always cast there in essentially the same method. The body of the roller is cast on an iron cylinder, and the necks in a flask of iron, coated with dry sand. The metal is poured into the lower neck by a tube which is perpendicular at the portion where the iron is poured in, but at the bottom turns off horizontally towards the lower neck, at a right angle, and enters it on the edge of the bearing of the roll, so called, in the direction of a tangent of a circle, so as to give the fluid metal a rotory motion. The object of this is to throw the impurities into the centre of the roller.

The rollers are cast in a mould composed of three pieces, a cylinder or chill for the body, and two necks or flasks, which are fastened to the cylinder and coated with dry sand.

The object is to have the necks of the rollers less hard than the bodies, which is effected by running them into dry sand instead of an iron mould. This is the method in which rollers have been made at Mr. Algers' since 1823, to my knowledge.

3d. To the third interrogatory he says: I have already answered this in my reply to the second interrogatory.

4th. To the fourth interrogatory he says: I knew them both. They were employed in Mr. Alger's foundry. Stewart was employed in common casting. I dont remember in what capacity Callender was employed. Neither of them had any thing to do with the casting of iron rollers, nor any means of learning the process.

5th. To the fifth interrogatory he says: I could not tell how long they worked there. They are neither of them there now. I believe Callender went off of his own accord, and Stewart was discharged. I dont recollect when they left.

6th. To the sixth interrogatory he says: we use an iron hoop in said foundry in casting chilled iron rollers. Its object is to catch the impurities and keep them clear from the surface of the chill. It is lifted up as the fluid rises in the mould. There is a handle attached to it perpendicularly by the centre. The said hoop does not interfere with the rotary motion of the metal in the chill.

7th. To the seventh interrogatory he says: Yes sir, the rotary motion depends on the turn of the tube.

8th. To the eighth interrogatory he says: There is no difference between this method of Mr. Harley's and that which has been in use in Mr. Alger's factory since 1822. The principle is the same.

9th. To the ninth interrogatory he says: I know not.

Answers to Cross Interrogatories.

1st. To the first cross interrogatory he says: I am a practical iron founder, and have been so for eighteen years.

2d. To the second cross interrogatory he says: I have cast iron rolls at Mr. Alger's factory and no where else, and according to the method above described.

3d. To the third cross interrogatory he says: I have been in his employment since 1822. I have had charge of the foundry as foreman for about three years. Before that I was a moulder.

4th. To the fourth cross interregatory he says: I have always cast iron rolls upon the same method, and first saw it in use in 1822.

The iron entered the lower neck sometimes in one part and sometimes in another, and in the direction before described in my answer to the second direct interrogatory the flask for the lower neck is in one piece.

Sometimes there was more sand and sometimes less, from one to three inches, according to the size of the neck. The flask was of iron, and round.

5th. To the fifth cross interrogatory he says: There have been no alteratians in the mode of casting rolls at Mr. Alger's foundry since I have been there.

6th. To the sixth cross interrogatory he says: I have seen them cast in this way by way of experiment. This mode is not now in use, and never was in use in Mr. Alger's foundry, it having been found to be a poor way of casting them. They cannot be cast in this way as well as in the other mode, as the impurities are thrown out on the surface of the roll.

7th. To the seventh cross interrogatory he says: There was nothing kept secret about it at Mr. Alger's foundry, and any person could see the operation who was not elsewhere engaged. But the

factory is a very extensive one, and men engaged in one part do not know any thing about what is going on in another.

8th. To the eighth cross interrogatory he says. I think I could tell by the direction of the runner.

9th. To the ninth cross interrogatory he says: I do not know any thing about Mr. Harley's patent. I first heard of it a year or two ago. I don't remember from whom.

10th. To the tenth cross interrogatory he says: He had made no alterations since I have been with him.

11th. To the eleventh cross interrogatory he says: I first made use of the hoop about twelve years ago at Mr. Alger's foundry, and I saw it used there before, it has been in use there ever since. The object of the hoop is to clear the roll of impurities which adhere to it as it is drawn up through it as before described. I think it accomplishes the object intended.

12th. To the twelfth cross interrogary he says: There is a crane ladle used there. It is not covered, but there is a screen put between the workmen and the ladle, to protect him from being burnt.

13th. To the thirteenth cross interrogatory he says: I have seen such a man. He worked in Mr. Alger's factory, but I do not know in what capacity, nor why he left, nor whether he was related to Stewart. He is not there now.

14th. To the fourteenth cross interrogatory he says: I have already described the method in use at Mr. Alger's foundry. I do not know the method in use in other foundries.

15th. To the fifteenth cross interrogatory he says: Ever since I began to make them, the upper neck has been put on before casting. Before that, I have understood that the other mode was sometimes used.

I have sometimes put in the upper flask, after the body was poured—but very seldom—and by way of experiment. The hoop is taken out through the sinking head, if the neck is put on first—otherwise it is taken right out of the top of the cylinder.

16th. To the sixteenth cross interrogatory, he says: I know not.

JOHN C. MANN.

William W. Wood, of Boston, iron founder, being previously examined, cautioned and sworn, hereby deposes as follows, in answer to interrogatories on the part of the defendants.

1st. To the first interrogatory he says: I am not acquainted with the parties.

2d. To the second interrogatory he says: I am acquainted with the process of making chilled iron rollers. I acquired my knowledge by practical workmanship and seeing others work. I have seen them cast in England from 1815 to 1822. There the metal was generally let into the top, though sometimes into the bottom, but no rotary motion. In 1822 I came to this country, and in about two years afterwards I commenced casting them at Mr. Alger's foundry. I went into Mr. Alger's employment in August, 1822,

and have been in his employment ever since. The body of the roller is there cast in a chill, and the necks are cast in sand. The moulds for the necks are fastened to the chill by the aid of keys. The melted metal is introduced into the bottom, generally in some part of the lower neck or coupling. It is sometimes let into the middle and sometimes at the sides, so as to give the metal a rotary or spiral motion. This rotary or spiral motion is generally given to the metal. It is given by introducing the metal into the neck in a direction like that of a tangent to a circle. This has been the method followed at Mr. Alger's since 1825.

3d. To the third interrogatory he says: I have answered this interrogatory in my reply to the previous one.

4th. To the fourth interrogatory he says: I have seen said Stewart and Callender. They were employed in the foundry of Mr. Alger. They worked as common green sand moulders. They had no opportunities of becoming acquainted with the method of casting chilled iron rollers in use there.

5th. To the fifth interrogatory he says: I should not think Callender was there more than two months, and Stewart not more than eight or ten, but I dont know positively. Neither of them are there now. I dont know when they left. I believe Stewart was turned away for being dissipated and that Callender left of his own accord.

6th. To the sixth interrogatory he says: There was and still is an iron hoop used in casting chilled iron rollers. The hoop is put into the chill and lifted up as the metal rises. The handle is attached to the centre of the circle of the hoop at the extremity of a piece of iron proceeding from the circumference to the centre. We never found that the hoop interfered with the rotary motion of the metal.

7th. To the 7th interrogatory he says: Yes, sir, the same flask is used in either case.

8th. To the 8th interrogatory he says: I do not see any difference in principle between this method of Mr. Harley's and that which has been in use at Mr. Alger's factory since 1825.

9th. To the ninth interrogatory he says: I know not.

Answers to Cross Interrogatories.

1st. To the first cross interrogatory he says: I am a practical iron founder, and have been so for twenty-six years.

2d. To the second cross interrogatory he says: I have seen chilled iron rolls moulded or cast at Ponbypool, in England, sometime between 1815 and 1820. They were cast in iron moulds, the metal generally let in at the top, but without a spiral motion. Since I have seen them cast no where but at Mr. Alger's foundry, as before mentioned.

3d. To the third cross interrogatory he says: I have been in the

employment of Mr. Alger since 1822, and am still. I am a dry sand or loam moulder.

4th. To the fourth cross interrogatory he says: There has been one method essentially used in Mr. Alger's foundry since 1822. The metal entered at different places from the lower end of the lower neck to the chill usually in the round part of the neck below the chill. It enters horizontally at the bottom of the tube in a direction approaching a tangent or a right or left angle. The flask for the lower neck is in one piece. There is sometimes two or three or sometimes four or five inches of sand between the inside part of the flask and the roll neck. The flask is of iron and round.

5th. To the fifth cross interrogatory he says: There has been no essential change in the casting of chilled rolls at Mr. Alger's since I first went there.

6th. To the sixth cross interrogatory he says: I have sometimes seen them cast so at Mr. Alger's foundry. It is now occasionally used there. Sometimes the cylinder is so small that we are obliged to use this method. Sometimes the moulder will introduce the metal in this way becanse it is a little less trouble for him. I dont think it makes much difference, but I think it better to give the metal a spiral motion. It has a tendency to throw the scurf and sediment into the centre whence it rises up through the sinking head.

7th. To the seventh cross interrogatory he says: It was never kept secret at Mr. Alger's foundry, though no one interferes with the moulder except the foreman.

8th. To the eighth cross interrogatory he says: I could tell how the metal had been let in by the direction of the runner, if it had not been cut off.

9th. To the ninth cross interrogatory he says: I do not understand the mode patented by Mr. Harley. I never heard of it till within a year or so.

10th. To the tenth cross interrogatory he says: I have seen no alterations since I have been in Mr. Alger's employment. The flask now in use is a round flask, varying in length and diameter, according to the size of the roll, made of iron, with sand rammed in and keyed on to the chill.

11th. To the eleventh cross interrogatory he says: I have seen a hoop used in casting iron rolls at Mr. Alger's foundry since 1825. It is still used. Its object is to keep the sediment or scurf in the centre of the roll. It does accomplish this object in a great measure. It is a simple iron hoop with a rod or spindle from the centre put into the chill before the metal and before the upper neck is fastened on, and when it is fastened on the handle comes up though the sinking head. The hoop is lifted up as the metal flows in and is kept on the surface of the metal till the chill is filled.

12th. To the twelfth cross interrogatory he says: There is a crane ladle used in Mr. Alger's foundry for pouring chilled rolls.

It is not covered. A screen is put up between the runner and the chill to protect him from the heat.

13th. To the thirteenth cross interrogatory he says: I recollect seeing a man named Robert Taylor at work at Mr. Alger's foundry. He was a common sand moulder. He is not there now. I could not tell when he left. I believe he got drunk and ran off. I believe he was a brother-in-law of Stewart's.

14th. To the fourteenth cross interrogatory he says: I have before described the only method in use at Mr. Alger's foundry since I have been there. I do not know whether it was followed at other foundries.

15th. To the fifteenth cross intlerrogatory he says: Generally it is placed on before; it is almost aways so now. Formerly when they first began to use the hoop they used to cast the body first and then put the neck on. This was formerly done at Mr. Alger's foundry. The hoop is used in the present mode of casting, and is drawn out through the sinking head. It is pulled through, being slightly fastened together at the extreme edge, which the heat dissolves and renders the hoop flexible so that it comes out nearly a straight piece.

16th. To the sixteenth cross-interrogatory he says I know not.

WILLIAM W. WOOD.

Abiel Elliot of Boston, iron and brass founder, being previously examined, cautioned, and sworn, hereby deposes as follows, in reply to interrogatories on the part of defendants:

1st. To the first interrogatory he says: I am not

2d. To the second interrogatory he says: I am acquainted with the process of making chilled iron rollers. I acquired it in Mr. Cyrus Algers foundry in South Boston, by superintending the operations of casting, melting, and moulding from the spring of 1833 till the fall of 1836. There were various ways of making chilled iron rollers tried by way of experiment, but the principal method in use was as follows: The iron was let in from the outside by a runner or gate. It was generally let into the lower neck. There was an iron chill for the body of the roll to which were fastened flasks for the upper and lower necks by bolts and keys. The flasks were coated with fine sand or loam, generally sand. The object was to have the iron enter in as fluid and pure a state as possible. The iron was poured into the runner so as to keep it full and thus exclude the air. Whenever the iron was sufficiently limpid the gate was frequently so placed as to give the melted iron a rotary motion, by which the impurities were thrown into the centre and passed up through the upper neck. This was done by giving the runner such a direction that the iron struck the outside of the mould.

3d. To the third interrogatory he says: I know they have been made in Mr. Algers's foundrey. I have described the method in general use there. The first I saw made here were in 1833.

4th. To the fourth interrogatory he says: I knew said Steward. He was engaged in Mr. Algers's foundry. He was an ordinary moulder. I don't know that he had any opportunities of becoming acquainted with the process of casting chilled iron rollers. He worked in a different and remote part of the foundry. I don't remember as to Calender.

5th. To the fifth interrogatory he says: Stewart was there about two years, but probably worked about one half the time. Neither he nor Calender are there now. Stewart left in September, 1836. I think I discharged him for intemperance, indolence, and carelessness. He was a miserable fellow, more fit for a house of correction than a foundry.

6th. To the sixth interrogatory he says: We used a hoop. The handle was usually attached to a piece extending from the circumference to the centre. The hoop was put in before the iron was poured and lifted up as the iron rose. It brought the impurities up with it. If the iron was limpid it *did* not interfere with the rotary motion, but if it was cold I think it did somewhat.

7th. To the seventh interrogatory he says: It would. The rotary motion depends upon the manner of introducing the metal, not upon the flask.

8th. To the eighth interrogatory he says: There is no difference in principle between this mode and that which I saw practised at Mr. Alger's in 1833.

9th. To the ninth interrogatory he says: I know not.

Answers to Cross-interrogatories.

1st. To the first cross-interrogatory he says: I am a practical iron founder, and have been engaged in some kind of iron business since I was twelve years old.

2d. To the second cross-interrogatory he says: I saw rolls cast at Plymouth, (Mass.,) in 1816. The chills were all iron. The metal was poured into the top and no rotary motion given to it. In 1833 or 1834 I saw some cast at Bridgewater; to all appearance the mould and runner was the same as at Mr. Alger's, but I did not examine the process. It is not esteemed proper to pry into the process of other foundries.

3d. To the third cross-interrogatory he says: I was in Mr. Alger's employment from April, 1832, till September, 1836, as foreman. I went there in September last and am there still as a brass founder.

4th. To the fourth cross-interrogatory he says: There never has been but one general mode of casting rollers at Mr. Alger's and that I have previously described. Other methods were often tried but merely by way of experiment. The metal generally entered at the neck, sometimes at the coupling. The flask for the lower neck was generally in one piece, sometimes in two. There was no particular method of dividing it but according to circumstances. The number of inches of sand room depended upon circumstances. There was no uniform size; the flask was of iron, generally round.

5th. To the fifth cross-interrogatory he says: There has been but one general mode of casting rolls at Mr. Alger's foundry.

6th. To the sixth cross-interrogatory he says: I never saw this method practised. I do not know whether this method is now in use anywhere. I should think they could not be cast in this way as well as the other. I never saw them cast so at Mr. Alger's foundry.

7th. To the seventh cross-interrogatory he says: The operation of casting was not kept secret at Mr. Alger's.

8th. To the eighth cross-interrogatory he says: I could tell if I saw the direction of the runner or gate.

9th. To the ninth cross-interrogatory he says: I know nothing about Harley's method. The first I heard of it was in 1835 or 1836. I think I heard it of Major Wade of Pittsburgh. He merely mentioned it.

10th. To the tenth cross-interrogatory he says: There have been no alterations made at the place since I have been acquainted with it. The flask now in use is an iron cylinder whose length depends upon circumstances, larger at one end than the other, casted with fine sand or loam.

11th. To the eleventh cross-interrogatory he says: I have seen a hoop used at Mr. Alger's foundry since 1832; it is still used there generally, but not always used. Its object is to keep the impurities from the surface of the roll. When the iron is good the hoop and the rotary motiom accomplish the object. I have described the hoop and stated how it was used in my answer to the sixth direct interrogatory.

12th. To the twelfth cross-interrogatory he says: We use a crane ladle there; we sometimes use a cover, but generally a screen, to prevent the workmen being burned.

13th. To the thirteenth cross interrogatory he says, I think there was a man of that name who once worked at Mr. Alger's foundry, but that is all I recollect about him.

14th. To the fourteenth cross interrogatory he says, I have described the method most used for casting rolls at Mr. Alger's foundry. I do not know whether it was used at any other foundry.

15th. To the fifteenth cross interrogatory he says, I never saw a roll cast by putting on the upper flask after the body was filled.—The hoop is taken out through the sinking head. The heat unlocks the fastening of the hoop, and it straigtens right out and is drawn through like a ribbon.

16th. To the sixteenth cross interrogatory he says, I know not.

ABIAL ELLIOT.

William H. Howard of Boston, iron founder, being previously examined, cautioned and sworn, hereby deposes as follows, in reply to interrogatories on part of the defendants.

1st. To the first interrogatory he says, I am not.

2nd. To the second interrogatory he says, I am acquainted with the process of making chilled iron rollers. I acquired my knowledge by seeing them made. I never moulded one. The first rolls I ever saw cast were at Mr. Alger's foundry in Easton, thirty years ago. The chill was divided in the centre, but I don't recollect how the metal was poured, as I was quite a lad at the time. I can't state as to the result aimed at. I went into Mr. Alger's foundry in South Boston as an apprentice to learn the trade in 1817. They then cast them in a divided chill, and the metal was introduced into the lower neck, but it entered horizontally at the centre, and without any rotary motion. Ie 1824, on one occasion, it was desired to cast a roll with a core in it, and in order to prevent the welded iron from cutting off the core, it was introduced into the neck in an angling direction, which gave it a rotary motion. We then thought that this method might be applied with advantage to the casting of solid rolls, as the rotary motion would throw the impurities into the centre, and accordingly tried it, and with success. This method of introducing the metal has been practised ever since at the foundry. In order to obtain the desired result, it is necessary that the iron should be very limpid.

3d. To the third interrogatory he says, I have answered this interrogatory in my reply to the previous one.

4th. To the fourth interrogatory he says, I knew the said Stewart. He worked a year or two in Mr. Alger's foundry. He was a common green sand moulder. He had no opportunities of becoming acquainted with the method of casting chilled iron rollers. I should think I have no recollection of Callender.

5th. To the fifth interrogatory he says, Stewart was there nearly two years. They are neither of them there now. I don't know when they left or why.

6th. To the sixth interrogatory he says, a hoop has been in use for many years at Mr. Alger's foundry in casting chilled iron rollers. It is put into the chill before the metal is poured, and is lifted up as the metal rises. There is a handle to it, but I am not certain how it is attached to it. The said hoop and handle does not interfere with the rotary motion of the metal.

7th. To the seventh interrogatory he says, the same flask would serve for both methods.

8th. To the eighth interrogatory he says, I should not think there was any difference in principle between this method and that which has been used at Mr. Alger's since 1824.

9th. To the ninth interrogatory he says, I know not.

Answers to cross interrogatories.

1st. To the first cross interrogatory he says, I am a practical iron founder, and that has been my business since 1817.

2d. To the second cross interrogatory he says, I have never moulded a roll. I have never seen them moulded any where except at Mr. Alger's foundry, as before stated in my reply to the second direct interrogatory.

3d. To the third cross interrogatory he says, I have been in Mr. Alger's foundry since 1817. From that time till 1825 I was employed in various offices in the foundry, and since that time I have been a partner in the establishment.

4th. To the fourth cross interrogatory he says, the first method of casting rolls at Mr. Alger's foundry, was witnessed by me about thirty years ago, when I was about ten years old. I have no knowledge of the method. When I went there as an apprentice in 1817, the metal entered the lower neck sometimes at the coupling. It entered horizontally and struck right across without any rotary motion. The flask for the lower neck was only in one piece. There were about three inches of sand room ; sometimes more.— The flask was of iron and round. The same flasks would serve to cast according to the present method.

5th. To the fifth cross interrogatory he says, there has been no substantial change in the method of casting used since 1817. The mould and flask are the same, also the runners. It was about sixteen years ago that a change was given to the direction of the metal by which a rotary motion was given to it. This may have been tried before, as Mr. Alger has made a great many experiments in the mode of casting. I should not term this a change of principle. The chill is now also in one piece, but was formerly in two fastened together. But this also was no change in principle.

6th. To the sixth cross interrogatory he says, I think I saw one cast in this way at Mr. Alger's foundry by way of experiment, but I don't remember when. It is not now in use ; it is a much inferior method to that now in use.

7th. To the seventh cross interrogatory he says, it never was kept secret at Mr. Alger's foundry to my knowledge.

8th. To the eighth cross interrogatory he says, I could tell if the runner was left on. I could tell by the direction of the runner.

9th. To the ninth cross interrogatory he says, I am not acquainted with Mr. Harley's method ; I heard of it within a year or two for the first time, but I do not know from whom.

10th. To the tenth cross interrogatory he says, about fifteen years ago a change was made in the chill, by which it was made in one piece instead of two. No other alteration has been made, except that in the direction of the metal before described. The flask now in use is a chill of iron, to which are fastened an upper and lower neck, also of iron, with a coating of sand inside.

15th. To the eleventh cross interrogatory he says: The hoop has been used at Mr. Algers foundry for ten or a dozen years. Its obect is to keep the scurf from the surface of the roll. It contri-

butes to this result. It is their wrought iron hoop with a handle attached to it, which is drawn up as the iron fills the cylinder.

12th. To the twelfth cross interrogatory he says: There is a crane ladle used. I do not think it is covered. A screen is put up to protect the workman.

13th. To the thirteenth cross interrogatory he says: I do not recollect said Taylor.

14th. To the fourteenth cross interrogatory he says: I have before described the mode most in use at Mr. Algers foundry. I know not as to other foundries.

15th. To the fifteenth cross interrogatory he says: The upper neck was not always on before the metal was poured. I have seen them cast, by putting the upper neck on after the body was filled, but it was many years ago, as much as twenty years ago. It was at Mr. Alger's foundry. The top neck is never on when the hoop is lined. The hoop is drawn up through the sinking head—the heat of the metal melts the rivet or fastening, and it is straightened out.

16th. To the sixteenth intorrogatory he says: I know not.

WM. H. HOWARD.

Solomon Perkins of Bridgewater, in the district of Massachusetts, iron founder, being previously examined, cautioned and sworn, hereby deposes in reply to interrogatories on the part of the defendants.

1st. To the first interrogatory he says: I do not know.

2d. To the second interrogatory he says: I am acquainted with the process of making chilled iron rollers. I acquired my knowledge of them from practice and information. I have made them of all sizes since the year 1825. The flask in which I have cast them has always been the same, and is composed of an iron chill for the body of the roll, to which are attached moulds for the upper and lower neck, made of iron and coated with sand. I have tried various methods of introducing the metal; sometimes at the top and sometimes at the bottom, but generally on the side of the lower neck, or at the coupling. In 1826, I introduced the metal by a gate in a diagonal direction into the neck of the roll, so as to give the metal a rotary motion. The object of this method was to throw the scurf and earthy matters into the centre of the roll. This method has been practised more or less ever since by me. No other methods have been used by me previous to 1835.

3. To the third interrogaty he says: I have never been in Mr. Alger's employment, I have frequently seen them cast, and the method seemed to be similar to my own.

4. To the fourth interrogatory he says: I know not.

5. To the fifth inrerrogatory he says: I know not.

6. To the sixth interrogatory he says: I know not.

7. To the seventh interrogatory he says: Yes sir, it would. The rotary motion is given by the inclination of the runner or gate.

8. To the eighth interrogatory he says: there is no difference in principle between this method, and that which has been practised in our foundry more or less since 1826.

9. To the ninth interrogatory he says: I know not.

Answers to Cross Interrogatories.

1. To the first cross interrogatory he says: I am a practical iron founder, I have been foreman of Lazell, Perkins & Co's. foundry at Bridgewater, since 1824, and have been engaged in the iron business since 1809.

2. To the second cross interrogatory he says: I have moulded rolls at our own foundry since 1825, as before stated in my answer to the second direct interrogatory, and according to the method therein described. I have never moulded them any where else, nor seen them cast except at Mr. Alger's occasionally, when I happened to be in there.

3. To the third cross interrogatory he says: I have never been in Mr. Alger's employment.

4. To the fourth cross interrogatory he says: I know not.

5. To the fifth cross interrogatory he says: I know not.

6. To the sixth cross interrogatory he says: I have seen them cast so. We have cast them so at our foundry. We sometimes cast them so now. For small rolls I think this way as good as others, but not for large. I know not as to Mr. Alger's foundry.

7. To the seventh cross interrogatory he says: We never kept the method secret. I know not as to Mr. Algers foundry.

8. To the eighth cross interrogatory he says: I could. The direction of the runners would point out the way.

9. To the ninth cross interrogatory he says: I know not as to Mr. Harley's method. I never heard of him before.

10. To the tenth cross interrogatory he says: I think Mr. Alger has made no alterations in his flasks, but I do not know.

11. To the eleventh cross interrogatory he says: We have used a hoop at our foundry, certainly ten years and perhaps longer. It is still used. It is a hoop made of a rail plate with a handle attached to the centre, coming up through the cylinder and the upper neck, and the sinking head, so that it can be taken hold of. The hoop is put in before the iron is poured, and as the iron rises, we lift it up, and keep on top. Its object is to keep the the impurities from adhering to the cylinder or chill, and it accomplishes this object.

12. To the twelfth cross interrogatory he says: They use a crane ladle at Mr. Alger's, or did so when I saw them cast. I know not as to the rest of this interrogatory.

13. To the thirteenth cross interrogatory he says: I know not.

14. To the fourteenth cross interrogatory he says: I know not.

15. To the fifteenth cross interrogatory he says: I have seen only two rolls cast by putting on the mould for the upper neck after the

body of the roll was filled. This was at our foundry about ten years ago. I know not as to Mr. Alger's foundry. The hoop is drawn out through the sinking head, the fastening being pulled apart.

16. To the sixteenth cross interrogatory he says: I know not.

SOLOMON PERKINS.

UNITED STATES OF AMERICA,
District of Massachusetts, sct. City of Boston.

On the eleventh, thirteenth, and fourteenth days of April, and the fifth, sixth, and eighth days of May, in the year eighteen hundred and forty, severally appeared before us, the undersigned commissioners thereto duly appointed, the witnesses whose names are above written, to wit: Cyrus Alger, John C. Mann, William W. Wood, Abiel Elliot, William H. Howard, and Solomon Perkins, and being each of them by us duly examined, cautioned, and sworn to tell the truth, the whole truth, and nothing but the truth, they gave severally the foregoing depositions in answer to the interrogatories and cross interrogatories hereto annexed, and made oath to the same, the same having been reduced to writing by George S. Hillard, one of the commissioners.

The foregoing depositions are taken by virtue of the commission hereto annexed, and to be used in the cause therein mentioned.

GEO. S. HILLARD,
THOMAS A. DEXTER.

Expenses.

Fees of the commissioners, - -	$40 00	
Fees of witnesses, $1 25 each - -	7 50	
Travel of S. Perkins, 25 miles - -	2 50	
	$50 00	

McClurg, Parry & Higby,

To Kingsland, Lightner & Cuddy, Dr.

For costs in the suit against McClurg, Parry & Higby *vs.* Kingsland, Lightner & Cuddy, in the district court of the United States, determined in favor of defendants at May term, 1840.

Depositions of Cyrus Alger and John C. Mann, certified at Boston November 17, 1837, - -	$6 25	
	4 25	
Postages - - - - -	75	
		$11 25
Depositions of Philip Kingsland, taken before M. B. Lourie at Pittsburg, February 25, 1836, - -		2 50
Depositions of Thos. Sweeny, taken before David Agnew		

and T. T. Welden at Wheeling, March 25, 1840,	5 00	
Postage of do. - - - - -	1 00	
		6 00
Depositions of Cyrus Alger, John C. Mann, Wm. W. Wood, Wm. H. Howard, and Solomon Perkins, taken at Boston in 1840, - - - -	50 00	
Postages of depositions, - - -	4 75	
Postage of commission to Boston, - -	2 00	
		56 75
Philip Shares five days a witness at May term, 1840, - - - - -	6 25	
Probate, - - - - -	12½	
		6 37½
Jno. Frizzel 6 days as witness at May term, 1840,	7 50	
Probate, - - - - -	12½	
		7 62½
Wm. T. Jones 8 days as witness at May term, 1840,	10 00	
Probate, - - - - -	12½	
		10 12½
John Nicholson twelve days as witness at November term, 1839, and May term, 1840, $15, probate 12½,		15 12½
Charles Bradley, six days as a witness at May term, 1840, - - - - -	7 50	
Probate, - - - - -	12½	
		7 62½
Abijah Eaton, ten days as witness November term, 1839, and May term, 1840, - - - -		12 50
Daniel Rich, three days as witness at May term, 1840, - - - -	3 75	
Mileage fifteen miles, 10, - - -	1 50	
		5 25
Benj. Minnis, three days as a witness, May term, 1840,		3 75
Samuel Leonard, twelve days as witness at November term, 1839, and May term, 1840, - -		15 00
Edward Beate, four days as witness May term, 1840, -		5 00
Abner Kerns, one day as a witness May term, 1840, -		1 25
Jas. Reed, three days as witness May term, 1840,	3 75	
Probate, - - - - -	12½	
		3 87½
Orlando Miller, seven days as witness at May term, 1840, and probate, - - - - -		8 87½
Total, - -		$178 87½

UNITED STATES OF AMERICA,
Western District of Pennsylvania.

Isaac Lightner, one of the defendants within named, being sworn before me according to law, on his oath saith that the above bill of costs is just and true as stated, to the best of his knowledge and belief. ISAAC LIGHTNER.

Sworn and subscribed November 19, 1840.

E. J. ROBERTS, *Clerk.*

[On which bill is the following endorsement:

"No. 9, October T., 1835. McClurg, Parry & Higby, assignees of James Harley, *vs.* Kingsland, Lightner & Cuddy."

Defendant's bill, $178 87½. Filed June 19, 1840. June 20th, 1840, 3 P. M., the within bill taxed by clerk at $178 87½.

E. J. ROBERTS,
Clerk.

Mr. Findlay, attorney for defendants, informing that he had given notice of the time of taxing the costs to Mr. Shaler, one of the counsel of plaintiffs.

E. J. ROBERTS.]

UNITED STATES OF AMERICA,
Western District of Pennsylvania, sct.

IN THE CIRCUIT COURT OF THE UNITED STATES,
For the Western District of Pennsylvania, in the Third Circuit of October Term, 1835.

KINGSLAND, LIGHTNER & CUDDY, *adsm.*
McCLURG, PARRY & HIGBY. } No. 9.

Issue *fieri facias* for costs.

JAMES FINDLAY,
Attorney for Defendants in the original action, and Plaintiffs in the Execution.

To E. J. ROBERTS, Esq.,
C. C. C. U. S. West. Dist. Pa.

June 30, 1840.

UNITED STATES,
Western District of Pennsylvania, sct.

The President of the United States to the Marshal of the Western District of Pennsylvania, greeting:

We command you that of the goods and chattels, lands and tenements, in your district of William T. McClurg, John C. Parry, and Enoch J. Higby, partners, doing business under the firm of McClurg, Parry & Higby, assignees of James Harley, late of your district, you cause to be made and levied as well a certain debt of ———, which in the circuit court of the United States in and for the western district of Pennsylvania, in the third circuit, before the judges of the said court, by the consideration of the same judges, lately recovered against the said McClurg, Parry & Higby,

assignees of James Harley, as the sum of two hundred and sixty-eight dollars and twenty-eight cents, which to the said Lawrence Kingsland, Isaac Lightner, and James Cuddy, partners, doing business under the firm of Kingsland, Lightner & Cuddy, in the said court was in like manner adjudged for their damages which they had sustained by occasion of the detention of that debt, whereof the said McClurg, Parry & Higby are convict, as appears of record; and have you then these monies before the said judges at a session of the same court to be holden at Pittsburg on the third Monday of November next, for their debt and damages aforesaid; and have you then there this writ.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at Pittsburg, [L. S.] this eighteenth day of May, A. D. 1840, and in the sixty-fourth year of the Independence of the United States.

E. J. ROBERTS,
Clerk.

[On which are the following endorsements: "No. 9 of October term, 1835. Mr. Clurg, Parry and Higby, *adsm* Kingsland, Lightner and Cuddy. Fi. Fa. for costs:

Clerk,	$51 00 1-2
Attorney,	8 00
Marsh. (Davis),	10 00
" Plumer,	20 20
Crier,	20
	$89 40 1-2
Defts bill,	178 87 1-2
Fi. Fa.,	2 40
Mars. on do.,	2 00
	$272 67

Money made, so answers A. Plumer, Marshal."

" FINDLAY."

Rec'd of Marshal Plumer two hundred and forty dollars twenty-seven cents; being my costs $53 40; attorney's fee $8; and defendants' bill $178 87 1-2.

E. J. ROBERTS, *Clerk.*

Clerk,	$53 40
Attorney,	8 00
Defts. bill,	178 87 1-2
	$240 27

Rec'd my costs the 13th August, 1840—$10.

JNO. M. DAVIS.

UNITED STATES,
For the Western District of Pennsylvania.

McCLURG, PARRY & HIGBY, Plff's in error, *vs.* KINGSLAND, LIGHTNER & CUDDY.	Writ of Error to Supreme Court United States.

Know all men by these presents, that we, James Harley and Thos. Miller, are held and firmly bound unto Kingsland, Lightner and Cuddy, defendants in the above suit in the sum of three hundred dollars, lawful money of the United States; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators firmly by these presents. Sealed with our seals, and dated the fourteenth day of January, in the year eighteen hundred and forty-one.

Whereas the above named McClurg, Parry and Higby have prosecuted their writ of error to the Supreme Court of the United States, from the judgment rendered in the above suit in which the said McClurg, Parry and Higby are plaintiffs, and the said Kingsland, Lightner and Cuddy are defendants, now, therefore, the condition of the above obligation is such, that if the above named McClurg, Parry and Higby prosecute their writ of error with effect, and answer all damages and costs—if they shall fail to make good their said writ of error, then this obligation to be void, otherwise to be and remain in full force and virtue.

JAS. HARLEY, [L.S.]
THOS. MILLER, [L. S.]

Sealed and delivered in presence of
S. H. ROBERTS.

I, Thomas Irwin, one of the judges of the circuit court of the United States, for the western district of Pennsylvania, have taken and approved the within bond of James Harley and Thos. Miller.

[L. S.] Witness my hand and seal, the fourteenth day of January, A. D. 1840.

TH. IRWIN.

UNITED STATES OF AMERICA,
Western District of Pennsylvania, sct.

I, Edward J. Roberts, clerk of the circuit court of the United States for the said district, do hereby certify that the foregoing are true and accurate copies of the docket entries, and of all the papers filed, of record, in the said court, in a certain suit therein pending, wherein William T. McClurg, John C. Parry and Enoch J. Higby, partners doing business under the firm of McClurg, Parry & Higby, are plaintiffs, and Lawrence Kingsland, Isaac Lightner &

James Cuddy, partners doing business under the firm of Kingsland, Lightner & Cuddy, are defendants.

In testimony whereof I have hereto set my hand and affixed the seal of the said court at Pittsburgh the fourteenth day of January, eighteen hundred and forty-one.

[L. S.]

E. J. ROBERTS.

WESTERN DISTRICT OF PENNSYLVANIA,
May Term, 1840.

McCLURG & als.
vs.
KINGSLAND & als.
} Case for Infringing Patent.

A deposition taken under the act of 1789, in a patent cause on part of the defendants, returned opened 18 months before the trial, to which the plaintiff had filed no exceptions or given notice of objection, is admissible in evidence to prove a prior use of the invention, without proof of the notice required by the act of Congress of 1836.

So when the same, and other witnesses gave their depositions on a commission taken out by defendants and cross interrogatories filed by the plaintiffs, relating to the same matter, no objections will prevail which are reserved till the trial, where there has been time to except or move to suppress, unless they relate to the competency of the matter deposed to.

Suits pending at the passage of the act of 1836 are to be conducted and decided according to the previous laws as modified by the 14 and 15 sections of that act.

It is no objection to a patent law that it is restrospective in its provisions.

In what cases patents were invalid under the laws prior to 1836, on account of the use of the patented invention before the application for a patent.

In what cases judgment shall be rendered for the defendants on the same account, under that law, and in what respects it is effected by the act of 1839.

The act of 1839 is retrospective to patents then issued and suits then pending.

It puts the persons who had fairly enjoyed the inventions before the application for a patent, on the same footing as if he had a licence from the inventor.

But such use does not invalidate the patent, unless the invention has been abandoned to the public; or there has been a prior use for more than two years.

Such use may be evidence of abandonment in less time than two years.

What is an abandonment of an invention to the public.

A defendant is not liable to damages for using a patented in-

vention which was made by a person in his employment at wages the experiments made at defendant's expense, without demand of compensation, or notice not to continue the use, till three months after the defendant had used the invention with consent of the inventor, before the application for a patent.

The words "specific machine," &c. means the invention or thing patented.

This was an action brought to October, 1835, for the violation of a patent for an improvement in the mode of casting chilled rollers, alledged to have been invented by James Harley, to whom a patent was granted on the 3d March, 1835, which was assigned to the plaintiffs on the 16th of the same month, and the patent and assignment recorded in the patent office, June 1837, pursuant to the act of March 3, 1837.

It appeared in evidence that Harley, the patentee was employed by the defendants in their foundry in Pittsburgh, receiving wages by the week. While so employed he claimed to have invented the improvement patented, and after some unsuccessful experiments made a successful one in October, 1834. The experiments were made in the defendant's foundry, and at their expense—Harley receiving his wages during the time. The improvement was highly useful, on account of which the defendant raised his wages one dollar a week. Harley continued in the employment of defendants till January or February, 1835, making rollers for them, and receiving wages from them. He often spoke about procuring a patent, and prepared more than one set of papers, which were not in form, the date of his application for a patent did not appear; his specification was attested 17th February, 1835; but in January, 1835, he made an agreement in writing to sell to the plaintiffs his right to the invention when he should procure a patent for it.

During the time of Harley's employment by defendants, he proposed that they should take out a patent, or purchase his right, which they declined; he made no demand on them for any compensation for using his improvement, nor gave them any notice not to use it till on some misunderstanding on another subject, he gave them such notice about the time of leaving their foundry, after making the agreement with the plaintiffs, who owned another foundry in Pittsburgh.

The defendants continued to make chilled rollers on Harley's improvement, of the amount of which they rendered an account to May, 1836. They contested the validity of the patent on account of the knowledge and use of the invention in England and in Boston, before the application for the patent, or the alleged discovery by Harley, and contended that as they had used the improvement with his consent, and the invention made at their expense while he was in their employment, they had right to continue the use. They also endeavored to prove that the improvement was the joint invention of Harley and another person, who was also in their employment at the time of the alledged invention.

The cause was tried at November term last, when a verdict was rendered for the plaintiff and a new trial awarded by the court.

At the former trial depositions had been taken at Boston, under the 30th section of the judiciary act, which were returned to the office and opened in March, 1838, without exception filed, or notice of any objection, to the reading of which the plaintiffs objected at the trial, on the ground that the notice required by the 15th section of the act of 1836 had not been given and the evidence related to a prior case, &c.

By the Court.

Had the objection been made in time it must have prevailed, as the act of 1836 applies to suits then pending; but the objection ought to have been made in a reasonable time after the depositions were opened. The objection was then received on a statement that notice had been given, but was mislaid, together with the copy.

At the present trial the defendant offered the depositions of the same and other witnesses to the same matter, taken at Boston under a commission in which the plaintiff filed cross interrogatories, the commission was returned with the depositions, and, after being opened, no exceptions were filed or objections made on a motion to suppress; to the reading of which the plaintiff objected for the want of notice of the matter intended to be proved.

By the court.

There is no ground for the allegation of surprise on the plaintiff under the circumstances of this case, independent of the depositions read at the former trial, which were taken at the same place and related to the same facts; the interrogatories on the part of the defendant pointed to the same matter of which the law required notice, as definitely as if a formal notice had been given in the words of the law, and we are not prepared to say that this is not sufficient notice. If this, however, was doubtful, we are clearly of opinion that the objection is too late, and if allowed will be a surprise on the defendant; a party who cross examines a witness when giving his deposition waives all objections for the want of notice or the manner of taking it, the putting cross interrogatories is in substance a cross examination, and unless an objection is made soon after the opening of the commission and noting it, we have held that the only ground of objection to the depositions which a party can refuse till the trial must relate to the competency of the matter deposed to. The objection is overruled.

The defendants offered to read the deposition of Thomas Sweney, taken under a commission.

To which the plaintiffs objected, because.

By the court.

The cause was argued by M. Candless and Shaler for the plaintiffs, and Findlay for the defendants.

Baldwin J. charged the jury as follows:

The acts of Congress in relation to patents for useful inventions

have undergone many changes, especially of late years, by reason whereof the system has become rather complicated than simplified, as is commonly the case where an attempt is made to give to a law the form and substance of a code on any subject, unless great pains are taken to harmonize the old and new law, by a thorough investigation of established principles on the construction of those which have been partially modified or repealed. Less uncertainty, however, will be found in the late laws than is usually found in acts which profess to cure existing mishaps by new provisions of a general nature. The late laws are complicated and their meaning obscure at first view, yet on a careful examination they present an intelligible outline of leading principles and rules of decision applicable to most cases which arise.

In ascertaining the rights of the parties in this case, the first question to be considered, is, what law governs it.

As the patent was issued, the abridgment made, and the first bought in 1835, the then existing laws are the rules of decision, unless their applicable provisions have been since supplied, repealed, or modified, in which case they must yield to subsequent changes. That they are retrospective and affect existing rights and remedies is no valid objection to their validity, as there is no limitation to the power of Congress in this respect, our only inquiry is what changes have been made, not in the power to make them.

By the 21st section of the act of 1836, all prior laws on the subject of patents are repealed, but suits before brought, may be conducted according to the provisions of former laws, except so far as the 14th and 15th sections of the act of 1836 apply; to which extent they possessed them, so far as any new or repugnant provisions are introduced, leaving the old law in force in all other respects, and the principle of others in construing them, rules of decision for the future.

When this first was brought, the acts of 1793, 1800 and 1832, were the test of the right of the patentee, his patent was void if the invention he claimed had been known or used in the United States, or in any foreign country, or described in any public work. In construing the law the Supreme Court have decided: that if the patentee permits other persons, (or a particular individual by his permission) to use the patented invention, without objection, or assertion of right, before his application for a patent, or in any way tacitly consents to, or acquiesces in its public use for any length of time, his inchoate right was lost, and could not be regained by a patent.

But if the use was suereptitious, in fraud of the right of the patentee, it will not effect the patent. The reason of this principle is, that if the thing patented has been in public use, the patentee has not complied with the requisites of the law, when his acquiescence in such use can be fairly presumed from the circumstances of the case, what the facts of the case are, is a matter of fact for the jury to decide; when the facts are ascertained or not contested, the le-

gal consequences are exclusively questions of law for the court. The right of a patentee to an invention which had been in use before the application, was not lost because there had been in fact any consent or acquiescence in the previous use, or any intention to do so but because the law requires him to follow up his invention with diligence, before it comes into public use, and assert it immediately on its violation; and this principle of law was strictly enforced against patentees. Negligence in the assertion was deemed acquiescence, or tacit consent to the violation of a right, as the legal consequence; there was no definite time necessary for this presumption to operate, four months has been held sufficient; greater length of time may be requisite, or less may suffice according to circumstances. If the patentee has actual notice, he must assert his claim immediately though the invention has become in public use, by fraud and breach of confidence, if actual knowledge of the use is not brought home to him, he will be presumed to have had notice, if it could be obtained by legal diligence, or if the use had been public or of long continuance, 2 Pet. 14 to 24. Pennoch vs. Lialoque, 6 Pet. 248–9. Grant vs. Raymond, 7 Pet. 313 to 323. Shaw vs. Cooper, 1. Bald, 309–13, and cases cited.

In Grant *vs.* Raymond, the Supreme Court decided that when the specification of a patent was defective, through inadvertence, mistake or accident, without any fraudulent intent, it might be surrendered and a new one issue for the original term, though there was no act of Congress to authorize it; and, in the conclusion of their opinion, the court remark that a public use of the invention, before the application for a patent, avoids it, though the inventor did not intend to abandon his invention. (6 Pet. 220, 39, 248.) Up to this time there had been no distinction taken by the Supreme Court, between the permission of the public use of the invention, and its use by the private permission of the inventor; (2 Pet. 15;) nor had there been any express legislation by Congress, as to the effect of a public use of the invention, before the application for the patent and after the previous discovery; the 6th section of the act of 1793 referred to the discovery of the invention, but the Court referred it to the application for a patent. Cosswell *vs.* Painter, Anto. 1 Bald R. 309. By the act of 1837 express authority was given to surrender a patent, which was invalid or inoperative, for not complying with the requisites of the previous laws, when it was owing to inadvertence, &c., and without any fraudulent intention, and a new one to be granted, subject "to the same matters of objection and defence ~~in~~ any original patent," whereby the new patent would have been liable to the same effects, by a public use previous to the application for it, as any other patent, and have been as void by such use, after an invalid patent had issued, as if none had existed. To avoid this consequence, it was declared "But no public use or privilege of the invention so patented, derived from or after the grant of the original patent, either under any special license of the inventor, or

without the consent of the patentee, that there shall be a free public use thereof, shall in any manner prejudice his right of recovery, for any use or violation of his invention, after the grant of such new patent as aforesaid." (4 Story 2301.)

It is true that this provision does not expressly extend to a case of an original patent, yet it may be taken as an expression of the sense of Congress as to the principle of the former laws, and as indicating their liberal policy towards patentees, which ought to be carried into future acts, in the two specified cases: 1. A public use or privilege under a special licence of the inventor, (which would have avoided the patent, according to 2 Pet. 15.) 2. Or without his consent to the free public use of the invention, (which defines the nature of a previous public use that avoids a patent.) That such an use ought not to render a patent void in either case, is a principle so conformable to justice, the evident policy of Congress, and the leading object of patent laws, that it may be fairly presumed to be a modification of former laws and their construction; it seems, indeed, to be designed to introduce another just and wholesome distinction, which had been wholly omitted by Congress and the Court. A public use or privilege, under a special licence of the inventor, or without any consent by him that there shall be a free public use of his invention, are put in marked contrast with each other, so is any use, however public, without his consent; hence the meaning of the law is plain: a special licence protects the persons to whom it is granted, but does not affect the patent as to others; a consent to the free public use is a general licence, and avoids the patent; any use, without consent, leaves the patent unimpaired; and public use means "a free public use" of the invention.

These views have been substantially embodied in the 15th section of the act of 1836, in specifying the cases where "judgment shall be rendered for the defendant;" "or if the thing patented had been in public use, or on sale, with the consent and allowance of the patentee, before his application for a patent."

Though the term "public use" is not as definite as "a free public use," they are tantamount and evidently used in the same sense; the term "on sale" means publicly sold, and both are in evident contradistinction to a public use, as a privilege to an individual, under a special licence. The word "public," refers to the notoriety, the openness of the use, as not being a private or concealed use, unknown to the public at large; but it does not refer to a privileged use, which the public cannot freely enjoy, by the express or presumed consent of the inventor. That such is the true construction of the act of 1836, is manifest from the 7th section of the act of 1839, which, on this subject, may be considered as a legislative declaration of the existing laws and their true construction, rather than as establishing any new principle, any further than by defining and illustrating established ones; it is explicit in its terms, retrospective in its operation on existing patents, finding

cases, and the language meets the cases referred to in the acts of 1832 and 1836. It provides "that any person, or corporation, who has or shall have purchased or constructed any newly invented machine, manufacture or composition of *of* matter, prior to the application for a patent, shall be held to possess the right to use and to vend to others to be used, the specific machine, manufacture or composition of matter, so made or purchased, without liability therefor to the inventor or other person interested in such invention; and no patent shall be held to be invalid by reason of such purchase, sale or use, prior to the application for a patent as aforesaid, except on proof of abandonment of such invention to the public, or that such purchase, sale or prior use has been for more than two years prior to such application for a patent." (Laws of 1839, p. 74,75.

In the first clause, the ~~use~~ of a prior use, under a special license or privilege, is clearly embraced. It protects the person so using the invention, or using it under such circumstances, that the jury might, or the law did presume a license; but it would not protect a person who pirated the invention, between the discovery and the application for a patent, who used it without or against the consent of the inventor, or had no peculiar right or privilege, resulting from his acts. A contrary construction would defeat the whole policy of the constitution and laws; the right which they confer "would not be exclusive, but would be participated with every person who had constructed the machine previous to the emanation of the patent," (1. Broch 252,) and encourage the violation of the inchoate right of inventors, while they were using due diligence in procuring its consummation by a patent.

The next clause can admit of no twofold meaning. The exemption of the person who has enjoyed the fair use previously, from all liability, confers no exemption upon others, nor invalidates the patent, unless in two specified cases—1. "on proof of abandonment to the public," which would make the use free to every one, and 2. if the prior use had "been for more than two years prior to the application for a patent"—which exercise, the use of a license or privilege, would have the same effect as an abandonment. There may be an abandonment in less than two years, either expressly or performed from circumstances, which is of the same effect. In this particular the law remains as laid down in the cases cited from 2d, 6th, and 7th Peters. To make out an abandonment, there must be a consent, express or implied, to a dedication of the invention to "a free public use thereof," which will be performed from notice, acquiescence, and negligence, or be repelled by diligence in the assertion and prosecution of his right by the inventor, as the case may be. The distinction which the law makes between the vigilant and the dormant, applies with peculiar force to cases for the violation of patented inventions, and generally gives a decisive character to the prior uses, according to the state of facts. The question whether the use has been under such circumstances, as justify the imputation or not, affords a safe rule by which to ascer-

tain what is an abandonment, dedication, or surrender to public use.

In applying these rules and principles to the present case, the first inquiry is, whether Harley was the first inventor of the improvement for casting chilled rollers, which is thus described in the summary of his specifications as the subject of his patented invention: "The tube or tubes, or passages, called gates, through which the metal to be conveyed into the mould shall not enter the mould perpendicularly at the bottom, but slanting, or in a direction approaching to a tangent of the cylinder, or if the gates enter the mould horizontally, or nearly so, shall not enter in the direction of the axis of the cylinder, but in a tangent form or inclining towards a tangent of the cylinder." This is the thing patented; its use by the defendants is admitted, leaving these questions to be decided by you: 1. Was this invention known or used in the United States, or had it been described in any public work, before the supposed discovery by Harley? 2. Had it been in public use, or on sale with his consent and allowance, before his application for a patent? In the first case, he would not be "the original and first inventor or discoverer of the thing patented." In the next, it would be an abandonment or dedication of it to a "free, public use;" and in either case, your verdict ought to be for the defendants. But if a knowledge or use of the invention existed only in a foreign country, it would not avoid the patent, if the plaintiffs have satisfied you that at the time of applying for a patent, Harley believed himself to be the first inventor; provided the invention had not been "described in any printed publication."

These are matters for your consideration, so far as they relate to the first invention, the public use or sale thereof; whether any printed publication or public *work* which has been given in evidence, describes the thing patented; is for the court to decide, on an inspection and comparison of the publications with the specification attached to the patent. Should you find in favor of the plaintiffs on the first facts, that Harley was the first inventor and that the invention was not in public use or on sale with his consent, and that though it may have been known and used in a foreign country, he believed himself to be the inventor; then the remaining question is, whether under the circumstances of the case, the defendants are liable to this action.

What the facts of the case are you will decide, if Harley made the invention while in the employment of defendants on stipulated wages, if the experiments were made at their expense, additional wages received in consequence of the successful result, and he continued to make rolls for them on his plan, for three months or thereabouts, without any demand for further compensation, or prohibition of the use of his invention, till he left their employment on a misunderstanding, on a subject wholly unconnected with the patent; the law of the case is clearly with the defendants. These facts would fully justify the presumption of a licence, a special pri-

vilege, or grant to the defendants to use the invention; they amount to a consent and allowance of such use, they show such a consideration as would support an express license or grant, or call for the presumption of one to meet the justice of the case, by exempting the defendants from liability. To exempt them under such circumstances, it is not necessary to bring their case within any specific provision of any act of Congress; for a license in fact, or one performed from the evidence, would be as effectual to protect the defendants, as if they had favored such a public use or sale of the invention before the application for the patent, as would be an abandonment, or surrender to the public of its free use. But the protection of the defendants arises not from the invalidity of the patent, it results from the peculiar relation between them and Harley, which can apply to no others who may use his invention: his acts before the patent have made it inoperative to deprive them of the special privilege to the continued use of his improvements, which they acquired by his licence express or implied.

The general principles of law would prevent a recovery of damages for a licensed use of the invention, without the case coming within the act of 1836; the consent of Harley, or his license to the defendants to use his invention, does not throw it opon to a free public use, nor can it be deemed to be a public use, or a putting the invention on sale with his consent and allowance. A licence, is neither an abandonment or evidence, from which it can be presumed; the licenced or privileged use, is rather an assertion of a general right, than a general dedication to the public; it is an exception applicable to the person who has the special privilege or licence, and it is perfectly consistent with the whole scope and spirit of all the patent laws to so confine it. In the act of 1832, the two cases of an use under a "special licence of the inventor," and an use "without the consent of the patentee, that there shall be a free public use" of the invention, are those where the right of recovery of damages does not exist; the latter case is provided for in terms by the 15 section of the act of 1836, but the former need no special provision, as no man can recover damages for an act done by his own consent or special license. These principles are embodied in the act of 1839; the patent is inoperative to prevent the continued use by a person who has purchased or constructed the machine, *and that* the patent is not invalid as to others who use the invention in violation of the patentee's right, unless in case of abandonment, or an use for more than two years before the application. Any use therefore by a special licence, or as a privilege of the inventor, or such as is protected by this law, if not contended for more than two years, leaves the patent unimpaired.

Thus viewed, the act of 1839 is in perfect conformity with all former laws; the decisions of the Supreme Court and the general principles of law with this exception, that the proprietor of a patent is not prejudiced by the use of his invention by "a particular individual, who did so by the private permission of the inventor,"

as held in 2 Pet. 15; the individual is exempted from any liability, yet the public are no more free to use the invention, than if no special permission had been given. In this respect, the condition of the patentee is bettered by the act of 1839; it draws the true distinction between the privileged and the public use of the invention before the application for the patent, giving to the license or permission its full effect after the patent as it had before, at the same time giving it no effect as to the public, if the patent is applied for within two years after the first privileged use.

In thus putting the patentee in a better condition than he was before, it cannot be supposed that Congress intended to put the person who had enjoyed the privileged use before the patent, in a worse situation after it issued than it was before; the license must be limited as to time, or it continues after the patent. Under the circumstances of this case, it would be manifest injustice to so construe this law, or to recognise any principle which would leave it optional with Harley or his assignees, to resolve the privilege, license or permission under which the defendants used the invention, whereby they would be protected only while he himself made the rollers on his plan. The words of the law are too plain for misapprehension; the person protected, "shall be held to possess the right to use, and vend to others to be used," &c. "without liability therefore to the inventor, or any other person interested in such invention;" a privileged or protected use is thus put on the footing of a special grant of the patent right to such person and his vendees, and both are exempted from any liability whatever. The case before us is stronger than the one expressly provided for, which extends to "every person, &c. who has or shall have purchased or constructed," and without requiring that it should be by the consent, allowance or license of the inventor, and it cannot be doubted that it must apply when either exists in fact, or is implied by law.

It has, however, been urged by the plaintiffs' counsel, that the right to the continued use is restricted to "the specific machine manufactured or composition of matter so made or purchased," so that a defendant is protected no farther than in the use of the invention (for which this patent was granted,) prior to the application, and is liable to damages if he makes any rolls by Harley's plan afterwards.

Should this be held to be the true construction of the act, it will be difficult to give it any practical operation in any case where the thing patented is merely a mode or method of doing an old thing in a new way—as in this case:—the invention consists in conveying the metal into the mould, by a gate placed at an angle, instead of a perpendicular or horizontal direction; no new machinery is applied, nothing is invented except as to the direction given to the heated metal, and if the law does not apply to the invention, or the thing patented, be it what it may, it follows that one rule applies to a patented machine, &c., and a different one to a patented

mode, method, or principle, applied to old machinery. This would be repugnant to the best settled principles of the patent law in England and the U. S. In England, the word "manufacture" in the statute of 21, Sec. 1, comprehends all patentable inventions, whether they are patented as modes, methods, or by any other name, it is a comprehensive generic term, embracing all inventions and discoveries. The patent to Mr. Watt was for a "method of lessening the consumption of steam and fuel in fire engines," and was held to be for an engine, machine, and manufacture, and the same principle has been adopted in the U. S. The words machine, manufacture or composition of matter, are used in all the acts of Congress, from 1790 to 1839, embracing all discoveries, inventions, or improvements in, or on visible tangible machinery; and the mode, method, success or manner of effecting the purpose, by refering to the mode of physical operation, necessarily relate to the invention, the thing patented, whatever it may be. Vide 1 Bald, 311–12, and cases cited.

This is the evident sense in which the word machine, &c., are used in the act of 1839; the word "specfic" refers to what was patented, to the invention itself, the discovery and application of the mode, or method of producing the effect on machinery, matter or any visible, tangible substance, in such a manner as to entitle the inventor to a grant of exclusive property in the thing invented. The subjects of a patent are "any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement on any art, &c.," the subject of the patent to Harley is an improvement on the art of making chilled rollers, not the roller itself—not the the mould in which it is cast, or any part of the machinery, but simply the manner of conducting the metal into the mould. Now had the invention been an improvement in the rollers, the mould or any part of the machinery itself, the thing patented would most clearly have been a newly invented machine, manufacture, or composition of matter, or an improvement on it. The questions then arise, did Congress mean to protect only those persons who had purchased or constructed "a newly invented machine," &c., and not to protect those who had purchased or constructed a "new and useful improvement" in an old machine. Was it meant to use the terms machine, &c., in this act, in a sense different from their settled, legislative and judicial acceptation and use, and confine them to their literal meaning, so as to exclude any "new and useful art," or "any improvement" thereon; or was it intended to apply its possession alike to all kinds of inventions by the use of genuine terms of well fitted meaning, as broad as the subjects of a patent? If we adopt the construction contended for in the first clause of the petition, by applying the term "specific machine," &c., to the rollers made at the time of the application for, or grant of the patent, the same construction must be carried throughout, whereby both parties will be carried back to the act of 1836, and previous laws, in order to ascertain the legal effect of a

prior use on their rights in one class of patents; while the act of 1839 would apply to another. We cannot believe such to have been the intention of Congress, or infer it from their language, till it has been more explicitly expressed by a provision, admitting of no two interpretations. The patent laws are so framed and put together, as to form one general, uniform system; in their details we do not find an useless repetition of all the terms used in defining the subjects of patents; they are referred to in different words, but all refering to the same thing. Thus we find in the 14th section of the act of 1836, relating to suits for "using the thing whereof the exclusive right is secured by any patent," in the 15th, "his invention," "his discovery," "the thing patented,," "that which was in fact invented or discovered," "the invention or discovery for which the patent issued," "that of which he was the first inventor;" in the 1st section of the act of 1837, "any patent for an invention, discovery, or improvement," "inventions and discoveries," (omitting improvements;) in the 2d section, the "invention," in the 3d "invention or discovery," in the 4th "patented inventions and improvements," in the 5th "the thing as originally invented," "an improvement in any machine, manufacture or process," in the 8th "newly discovered improvement to an existing patent," &c., &c.

We therefore feel bound to take the words "newly invented machines, manufacture, or composition of matter," and "such invention," in the act of 1839, to mean the invention patented, and the words "specific machine," to refer to "the thing as originally invented," "whereof the exclusive right is secured by patent," but not to "any newly invented improvement to an existing patent." The use of the patent must be the same specific improvement originally invented, as was before the application used by any person who had purchased or constructed the machinery on which the improvement operated to produce the effect described in the specification; but when such person confines the effective use to the specific mode, method, manner, and process of procuring "the described effect;" it is by the words and true meaning of the law "without liability to the inventor, or any three persons interested in the invention." So construed, and by thus protecting the person who has enjoyed the use of an invention before the application for a patent, the great object of the patent laws are declared in the 4th section of the act of 1837, will be consumated; that is, to "protect the rights of the public and of patentees in patented inventions and improvements," 4 Story, 2547. A different construction would make it necessary to carry into all the former laws the same literal exposition of the various terms used to express the same thing, and thereby changing the law according to every change of phraseology, make it a labyrinth of inextricable confusion.

Our opinion, therefore, is that the defendants have a right to the continued use of the improvement patented to Harley, the facts of the case which are not controverted have equal effect with a license;

and the evidence brings the defendants under the protection of the act of 1839, by the unmolested notorious use of the invention before the application for a patent. Nothing has been shown, on the part of the plaintiffs, to counteract the effect of this prior use, as assignees of Harley, they stand in his place as to right and responsibility; they took the patent, subject to the legal consequences of his previous acts, and connecting these with the want of an assertion of a right adverse to the use by the defendants of the invention patented, till this suit was brought in September, 1835, protects them from liability.

In our opinion, your verdict ought to be for the defendants. Verdict accordingly, and judgment for defendants.

McClurg, Parry, & Higby, *vs.* Kingsland, Lightner, & Cuddy. } Bill of Exceptions.

And the plaintiff, thereupon, excepted to certain parts of the instructions so given by the court to the jury, which instructions so excepted to, are hereinafter set forth, to wit:

It has, however, been urged by the plaintiff's counsel that the right to the continued use is restricted to the "specific machine, manufacture, or composition of matter so made or purchased," so that a defendant is protected no farther than in the case of the invention (for which this patent was granted) prior to the application, and is liable to damages if he makes any rolls by Harley's plan afterwards.

We, therefore, feel bound to take the words, "newly invented machine," in the act of 1839, manufacture, or composition of matter and such invention, to mean the invention patented, and the words "specific machine," to refer to the thing originally invented, whereof the exclusive right is procured by patent, but not to any newly discovered improvement to an existing patent.

The use of the patent must be of the same specific improvement originally invented, as was before the application used by any person who had purchased or constructed the machinery on which the operated to produce the effect described in the specification; but when such person confines the future case to the specific mode, method, manner, and process of producing the described effect, it is, by the words and true meaning of the law, without liability to the inventor or other person interested in the invention, so construed; and by thus protecting the person who has engaged the use of an invention before the application for a patent, the great object of the patent laws, as declared in the 4th section of the act of 1837, will be consummated; that is, to protect the rights of the public and "of patentees in patented inventions and improvements," 4 Story, 2547. A different construction would make it necessary to carry into all the former laws the same literal exposition of the various